

Ohio Association of

COUNTY
BEHAVIORAL
HEALTH
AUTHORITIES



January 11, 2016

Dear ADAMH Board Executive Directors:

The Ohio Association of County Behavioral Health Authorities has been working with the Auditor of State's office over the last 10 months to update the *Behavioral Health Handbook*. This has been a very collaborative effort and we are pleased to release to you the updated manual!

The *Behavioral Health Handbook* is a comprehensive reference guide that identifies and explains the majority of the laws in Ohio that pertain to the operational duties and responsibilities of community alcohol, drug addiction and mental health Boards. This *Handbook* provides guidance that should help make complying with these laws easier. Additionally, the *Handbook* should also help your Board prepare for your annual audit

The *Handbook* has been developed as a product of *Recovery is Beautiful*, to assist Boards as they transition to Recovery Oriented Systems of Care (ROSC). The *Handbook* is intended to assist in ROSC Principles 4 & 5- *Prioritizing Accountable and Outcome-Driven Financing* and *Locally Managing Systems of Care*, to ensure that your Board has the tools it needs to operate efficiently and effectively all while being good stewards of local tax payers' dollars.

We hope that you and your staff find this *Handbook* helpful, and we look forward to continuing working with the Auditor of State's office in keeping the *Handbook* updated!

Sincerely,

Cheri L. Walter
CEO

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Treatment Works . . . People Recover



Dave Yost · Auditor of State

November 12, 2015

Ms. Cheri Walter, Chief Executive Officer
Ohio Association of County Behavioral Health Authorities
33 North High Street, Suite 500
Columbus, Ohio 43215

Re: Behavioral Health Handbook

Dear Ms. Walter:

At the request of your Association, the Auditor of State's Legal, Audit and Local Government Services Sections were pleased to participate in reviewing the updated Behavioral Health Handbook as it pertains to accounting and audit related issues.

This manual serves as a comprehensive overview of Board matters. The handbook addresses a wide range of topics and should serve as a useful reference tool for ADAMH/CMH/ADAS Boards.

The Auditor of State's review was not intended to provide legal interpretations or to answer every question which may affect ADAMH/CMH/ADAS Boards. Although we believe this handbook provides a comprehensive overview of Board matters, it is by no means a substitute for legal advice. You should discuss any matters of uncertainty with your legal advisor.

Also, the Auditor of State's review does not, other than as clearly specified in the text, deal with the power, authority, or responsibilities of agencies providing alcohol, drug addiction and mental health services to the community under contract with a Board.

Please don't hesitate to contact our staff if you have any questions. The names of the appropriate representatives of the Auditor of State to direct your questions, including addresses and toll free numbers, are set forth in the appendix. We would be happy to help you in any way we can at your request. We look forward to working with you in the coming years. Thank you.

Sincerely,

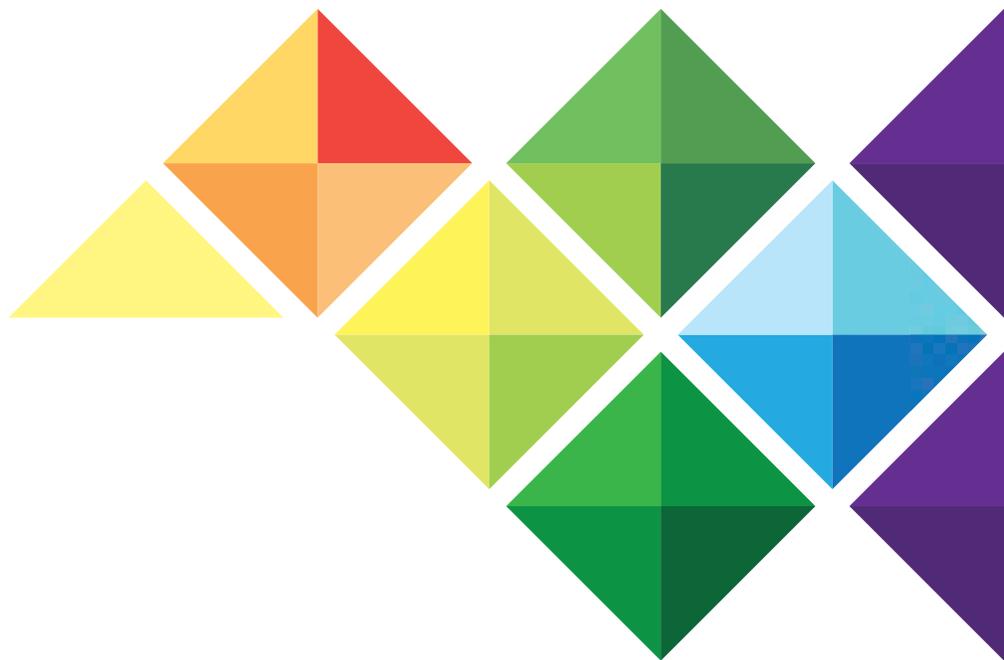
A handwritten signature in blue ink that reads "Dave Yost".

DAVE YOST
Auditor of State



Behavioral Health Handbook

January 2016



Ohio Association of County Behavioral Health Authorities

33 North High Street, Suite 500, Columbus, Ohio 43215 • 614-224-1111 • www.oacbha.org

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PREFACE

This Handbook is intended to be a general reference guide for public officials who have a need for knowledge in this area. It is not designed to provide legal interpretations or to answer every question which may affect Alcohol, Drug Addiction and Mental Health Services Board, Community Mental Health Services Boards, and Alcohol and Drug Addiction Services Boards (referred to in this manual as “ADAMH”, “CMH” and “ADAS” Boards” or collectively “Boards”). For example, it does not, other than as clearly specified in the text, deal with the requirements applicable to agencies providing alcohol, drug addiction and mental health services to the community under contract with a Board.

As particular problems arise, ADAMH, CMH, and ADAS Board members and Executive Directors must seek the advice and opinion of their legal advisor.

Questions may also be submitted to the office of the Auditor of State in regards to content areas that are under its purview. The names of the appropriate representatives of the Auditor of State to whom to direct your questions, including addresses and toll free numbers, are set forth in the appendix.

PART I

**ALCOHOL, DRUG ADDICTION, AND
MENTAL HEALTH SERVICE
DISTRICTS**

ALCOHOL, DRUG ADDICTION, AND MENTAL HEALTH SERVICE DISTRICTS

PURPOSE AND AUTHORITY

Ohio Revised Code (O.R.C.) 340.011(A) sets forth the purposes of the Ohio Mental Health Act of 1988 and the Alcohol and Drug Addiction Services Act of 1989. According to this Section, Chapter 340, which encompasses the statutory powers and duties of Boards, is to be interpreted to accomplish the following:

1. Establish a unified system of treatment for mentally ill persons and persons with addictions;
2. Establish a community support system available for every alcohol, drug addiction, and mental health service district;
3. Protect the personal liberty of mentally ill persons so that they may be treated in the least restrictive environment;
4. Encourage the development of high quality, cost effective, and comprehensive services, including culturally sensitive services;
5. Foster the development of comprehensive community mental health services, based on recognized local needs, especially for severely mentally disabled children, adolescents, and adults;
6. Ensure that services provided meet minimum standards established by the Director of the Ohio Department of Mental Health and Addiction Services;
7. Promote the delivery of high quality and cost-effective addiction and mental health services; and
8. Promote the participation of persons receiving mental health and addiction services in the planning, delivery, and evaluation of these services.

ESTABLISHMENT OF ALCOHOL, DRUG ADDICTION AND MENTAL HEALTH SERVICE DISTRICTS

O.R.C. 340.01 requires that an alcohol, drug addiction and mental health service district be established in each county, or combination of counties with a population of at least fifty thousand to provide addiction and mental health services. In addition, any county or combination of counties with a population of less than fifty thousand may establish such a district, by formal action of the board(s) of county commissioners of the county or counties involved, if authorization is obtained from the Director of the Ohio Department of Mental Health and Addiction Services. "Population" for such purposes is that shown by the most recent regular federal census. O.R.C. 1.59(D). When a district is comprised of more than one county, it is known as a joint-county district. O.R.C. 340.01(B). Generally, no distinction exists between a single and joint county Board concerning the functional powers and duties; however, a distinction does exist in regard to the manner of operation of each particular Board. 1986 O.A.G. 86-048. These distinctions will be elaborated on when the particular subject matter is discussed in this Handbook.

For a county to withdraw from a joint-county district, the board of county commissioners requesting withdrawal from the joint-county district must submit a resolution requesting such, together with a comprehensive plan that is in compliance with rules adopted by the Director of

OhioMHAS under O.R.C. 5119.22, that provides for the equitable adjustment and division of all services, assets, property, debts and obligations of the joint-county district. The resolution and comprehensive plan must be submitted to the joint-county ADAMH Board, the boards of county commissioners of each county in the district, and the Director of Mental Health and Addiction Services. Withdrawal requires the consent of the Director of OhioMHAS and cannot take effect earlier than one (1) year after submission of the resolution unless the consent of all participating counties, through the boards of county commissioners, is obtained. Any county withdrawing from a joint-county district will continue to have levied against its tax list and duplicate any tax levied by the district during the period in which the county was a member of the district, until such time as the levy expires or is renewed or replaced.

SEPARATE ALCOHOL AND DRUG ADDICTION SERVICES BOARD AND COMMUNITY MENTAL HEALTH BOARD IN CERTAIN COUNTIES

As part of the Alcohol and Drug Addiction Services Act of 1989, the boards of county commissioners in alcohol, drug addiction, and mental health service districts with certain population levels were given the option to establish a separate alcohol and drug addiction services board and a separate community mental health services board as the entities responsible for providing behavioral services in that service district. Currently, only one service district is organized in that manner.

A CMH Board has all the powers, duties, and obligations of an ADAS Board with regard to mental health services and an ADAS Board has all the powers, duties and obligations of an ADAMH Board with regard to addiction services. Similarly, any provision of the revised code that refers to an ADAMH Board with regard to mental health services also refers to a CMH Board and any provision that refers to an ADAMH Board with regard to alcohol and drug addiction services also refers to an ADAS Board. O.R.C. 340.021(A).

The board of county commissioners in a service district with a CMH and an ADAS Board is permitted to combine them into an ADAMH Board by adopting a resolution providing for the ADAMH Board's establishment. For the initial appointment to the ADAMH Board, the former CMH Board and ADAS Board must jointly submit to the board of county commissioners and the Director of OhioMHAS the members of those Boards that are recommended for reappointment. O.R.C. 340.021(B). To the greatest extent possible, the appointing authorities must appoint the initial members from among those recommended. An ADAMH Board formed under this section has the same rights, privileges, immunities, powers and duties that were possessed by the separate CMH and ADAS Boards and all property and obligations of the separate Boards are to be transferred to the newly formed Board.

ACCOUNTABILITY

The Comptroller General of the United States, in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* (2003) states:

The concept of accountability for public resources is key in our nation's governing processes. Legislators, other government officials, and the public want to know whether: (1) government resources are managed properly and used in compliance with laws and regulations, (2) government programs are achieving their objectives and desired outcomes, and (3) government services are being provided efficiently, economically, and effectively. Managers of these programs are accountable to legislative bodies and the public.

It is firmly established in Ohio, that all public agencies, including ADAMH, CMH, and ADAS Boards, possess only such powers and authority as are expressly granted to them by statute, or

necessarily implied therefrom. 97 O.A.G. 97-051. Therefore, it is necessary that officials of a Board, when contemplating a course of action, find express or implied authority for such action in the Ohio Revised Code. If there is any doubt as to the authority for a contemplated action or for the expenditure of funds, it is to be resolved against the exercise of such authority or the expenditure of funds. *State, ex rel, Locher v. Menning, 95 Ohio St. 97 (1916).*

State/County Agency Accountability

ADAMH/CMH/ADAS Boards are specifically accountable to numerous public agencies for the manner of their operation. These include, for example: the Ohio Public Employees Retirement System, the Ohio Bureau of Workers Compensation, the Ohio Ethics Commission and, of course, the county budget commission and the county fiscal system organized around it. There are, however, three agencies which may be considered in detail: (1) the Ohio Department of Mental Health and Addiction Services; (2) the board(s) of county commissioners of the county or counties comprising the service districts; and (3) the Office of the Auditor of State.

Department of Mental Health and Addiction Services

The Ohio Department of Mental Health and Addiction Services (OhioMHAS) is responsible for the regulation and oversight of Ohio's community mental health and addiction services system. The Director of OhioMHAS is also vested with rule making authority pursuant to O.R.C. Chapter 119 and with regulatory responsibility to effectuate the purposes of O.R.C. Chapters 340, 5119 and 5122 in regard to the duties and obligations of ADAMH, ADAS and CMH Boards. OhioMHAS also promulgates rules that govern the licensing and certification of mental health and addiction services providers and facilities and that define the minimum requirements for maintaining certification and licensure.

The scope of this Handbook is limited primarily to the fiscal and legal requirements of ADAMH, ADAS and CMH Boards and generally does not extend to the rules of OhioMHAS.

The legality of a Board's actions, responsibilities, or duties may be affected by the statutes and rules of OhioMHAS or other sections of the Ohio Revised Code. Therefore, it is strongly recommended that prior approval of OhioMHAS, or a written legal opinion by the Board's legal advisor, be sought in cases of doubt.

Boards of County Commissioners

Although the board(s) of county commissioners of the counties comprising a single or joint county service district do not possess operational control over ADAMH, CMH, and ADAS Boards, they do have statutorily defined roles that will influence the operations of the Boards. This may be done by means of their authority to appoint governing board members, appropriate money for the district, and to seek a tax levy in excess of ten mills.

In addition, Boards are required to submit an annual report of the services under their jurisdiction, including a fiscal accounting, to the board of county commissioners pursuant to O.R.C. 340.03(A)(10). The Board of a joint-county district must, of course, submit the report to the boards of county commissioners of each county in the district.

Boards are also required, when setting priorities for the operation of addiction services, to consult with the boards of county commissioners in their service districts regarding referrals for services made by a public children services agency (PCSA) for children, or the parents, guardians and custodians of those children, that have been identified by a PCSA as being at imminent risk of abuse or neglected because of an addiction of a parent, guardian or custodian.

Auditor of State

Pursuant to O.R.C. Chapter 117, the Auditor of State is responsible for the audit of all public offices in accordance with generally accepted government auditing standards. The Auditor of State is empowered to inquire into "the methods, accuracy, and legality of the accounts, records, financial reports, files, and reports of the office, whether the laws, rules, ordinances, and orders pertaining to the office have been observed, and whether the requirements and rules of the Auditor of State have been complied with." O.R.C. 117.11(A). The Auditor of State is also authorized to prescribe financial accounting and reporting requirements for all public offices other than state agencies. O.R.C. 117.43.

The Auditor of State has established within its office a Local Government Services Section with the responsibility for assisting in the financial and reporting requirements for public offices and for providing such offices with professional and consulting services on a cost basis. Assistance is available on a charge-back basis for consultation regarding accounting systems, internal control study and evaluation, management studies, cash flow analysis, financial statement preparation, records reconstruction, and financial forecasts. The toll-free number to contact the Local Government Services Section is provided in the Appendix of this Handbook.

Audit services are provided by the Audit Division, with a central administrative office in Columbus and regional offices in Southeast (Athens), East (Canton/Youngstown), Southwest (Cincinnati), Northeast (Cleveland), Central/State (Columbus), Northwest (Toledo) and West (Dayton). Toll-free numbers for the central administrative office in Columbus and for the regional offices are listed in this Handbook. The Auditor of State will perform general audits of all public offices in the state, including joint-county ADAMH Boards and single-county ADAMH, CMH and ADAS Boards. Joint-county ADAMH Boards receive a separate audit and Single-county ADAMH, CMH, and ADAS Boards receive their audit as part of the county overall audit. The scope of the audit will be designed to accommodate generally all state and federal audit requirements, including the "single audit" required by the Single Audit Act of 1984.

These audits of the Boards (and/or County) will be conducted on an annual basis and will include a full financial and compliance audit in accordance with generally accepted government auditing standards promulgated by the Auditor of State.

Special audits, conducted independently from the normal audit schedule, may be instituted at the option of the Auditor of State. Such audits are usually initiated by local officials or the Auditor of State after the receipt of information indicating the need for an investigation. If a special audit is requested by a Board, the request will be forwarded to the Special Audit Task Force and Public Integrity Assurance Team Chief, who will evaluate the request in terms of the audit schedule, available personnel, and information submitted by the Board in support of the request.

The Auditor of State is authorized, when necessary in the opinion of the Auditor, to audit providers operating under contract with a Board. Requests for audits of contract providers will be treated as requests for special audits.

Audits conducted by the Auditor of State will be performed by Assistant Auditors pursuant to Section 117.09, Revised Code. Their compensation and expenses and the expense of preparing the audit report will be charged to the district and billed to it by way of its fiscal officer pursuant to Section 117.13, Revised Code.

If it is necessary for books and records to be removed from district offices in the course of an audit, a Board representative should prepare an itemized and dated receipt for the materials and ask that the auditor sign it. Upon return of the materials, the receipt should be

returned to the auditor, with a notation that the materials were returned, dated and signed by a district representative. If necessary, Assistant Auditors as well as other designated employees are authorized, pursuant to O.R.C. 117.18, to issue subpoenas to compel the attendance of witnesses and the production of books and papers.

Upon completion of the audit, a preliminary report is prepared by the auditors. The Executive Director and governing board members will be invited to an exit conference to discuss the preliminary report. Due to the preliminary status of the report, such conferences have been exempted from the requirements of O.R.C. 121.22(D), the "Sunshine Law". Accordingly, attendance is limited to representatives of the Board. A breach of confidentiality with regard to the exit conference will preclude further conferences in future audits.

The exit conference will include a review of the audit and the preliminary audit report, suggested improvements to ensure compliance with applicable legal requirements, and recommendations for improving systems operations. The Board and affected individuals will be encouraged to comment upon the report, and may, if they wish, take formal exception to the results of the audit report. This should be done by submitting a written statement to the auditors within five (5) working days of the exit conference.

The preliminary report will be thoroughly reviewed at several levels after it is submitted by the assistant auditor, with careful consideration given to any official statement of exceptions. If the issues presented by the local official appear to be well-taken, the preliminary report will be amended accordingly. When the report is approved for release, a copy will be sent to the Board, the county auditor serving as fiscal officer, and the county prosecuting attorney (for joint-county Boards, this will be the prosecuting attorney of the county in which the district treasurer resides).

If the report indicates that public money has been unlawfully expended, that public money collected has not been accounted for, that any public property has been converted or misappropriated, or that public money has not been collected, a finding for recovery may be issued, directed to the individual(s) responsible for the loss. O.R.C. 117.28. If the finding is based upon the unlawful expenditure of public money, the finding may be made against any officer who orders or participates in the expenditure and his surety, as he is personally liable for the loss to the subdivision. 1952 O.A.G. 52-1713; 1976 O.A.G. 76-017. In the case of an ADAMH, CMH, or ADAS Board, this may include the governing board members, the Executive Director, the county auditor serving as fiscal officer of the Board, and the recipient of the money, as circumstances warrant.

In the event that a finding for recovery is rendered against an individual, the individual is customarily given the opportunity to repay the amount in question prior to completion of the audit. When this is done, a finding notice will be issued; however, a notation will be added to the report to the effect that a repayment was made during the audit.

The prosecuting attorney must, within one hundred twenty (120) days, institute civil actions to collect such funds. If he/she does not act, the Attorney General may file an action for collection of the finding for recovery. Either action may also join the surety on any official bond of an office or employee.

PART II

**ADAMH/CMH/ADAS
BOARD GOVERNANCE**

ADAMH/CMH/ADAS BOARD GOVERNANCE

The appointment to and organization of Alcohol, Drug Addiction and Mental Health Services Boards is governed by O.R.C. 340.02 and the appointment to and organization of Community Mental Health Services Boards and Alcohol and Drug Addiction Services Boards is governed by O.R.C. 340.021.

Establishment of Board

The governing boards of ADAMH, CMH and ADAS Boards consists of eighteen members, except for boards that received approval from their respective boards of county commissioners to become fourteen member governing boards when that option was available prior to 2014.

Appointment of Board Members

For an eighteen member governing board, the Director of OhioMHAS must appoint eight members and the county commissioners must appoint ten members. For a fourteen member ADAMH Board, the Director of OhioMHAS appoints six members and the county commissioners appoints eight members.

In a joint-county ADAMH Board district, the county commissioners of each participating county must appoint governing board members in as nearly as possible the same proportion as that county's population bears to the total population of the district, except that at least one member must be appointed from each participating county.

In service districts with a CMH and an ADAS Board, twelve of the governing board members are appointed to eighteen member boards by the county commissioners and six are appointed by the Director of OhioMHAS. For fourteen member CMH and ADAS Boards, eight are appointed by the county commissioners and six are appointed by the Director of OhioMHAS.

Eligibility Requirements of Board Members

All governing board members must be residents of the service district in which they serve and the membership must, as nearly as possible, reflect the composition of the population of the service district as to race and gender. The following describes the additional governing board member requirements for each type of Board.

ADAMH Boards: Half of the governing board members must be interested in mental health services and half must be interested in alcohol, drug, or gambling addiction services. The Director of OhioMHAS must also ensure that at least one member of the Board is a person who has received or is receiving mental health services and at least one is a parent or other relative of such a person, that at least one is a person who has received or is receiving addiction services and at least one is a parent or other relative of such a person, at least one is a clinician with experience in the delivery of mental health services and at least one is a clinician with experience in the delivery of addiction services. A single governing board member who meets both qualifications may fulfill both clinician requirements.

CMH Boards: All governing board members must be interested in mental health services. The Director of OhioMHAS must also ensure that at least one member of the governing board is a person who has received or is receiving mental health services, at least one members is a parent or relative of such a person and at least one members is a clinician with experience in the delivery of mental health services.

ADAS Boards: All governing board members must be interested in alcohol, drug, or gambling addiction services. The Director of OhioMHAS must also ensure that at least one member of the governing board is a clinician with experience in the delivery of addiction services, at least is a person who has received or is receiving services for alcohol, drug, or gambling addiction and at least one is a parent or other relative of such a person.

Oath of Office

As public officers within the scope of Article 15, Section 7, Ohio Constitution, governing board members are subject to O.R.C. 3.22, which requires that any person appointed to a public office under the laws of this state must take an oath of office before entering upon the discharge of his or her duties. Pursuant to O.R.C. 3.23, each governing board member must take an oath to support the Constitution of the United States and the Constitution of the State of Ohio, and to faithfully discharge the duties of his/her office.

The oath of office may be administered by a notary public, a judge, any elected official that serves within the Board's service district, or by any member of the General Assembly throughout the state. O.R.C. 3.24. Once completed, the oath should be filed with the records of the Board.

Quorum

A quorum is needed in order to bind the actions of Boards. Chapter 340 does not specify a quorum requirement. See 1978 Ohio Atty. Gen. Op. 047. Per applicable case law, a quorum is constituted when the majority of the governing board members are present and competent to transact business, in the absence of other members. *State ex rel. Cline v. Wilkesville Township* (1870), 20 Ohio St. 288, 294. When there is a vacancy or vacancies on a board, a quorum will consist of the majority of all other members who remain qualified to transact business. See, *State ex rel. Attorney General v. Orr* (1899), 61 Ohio St. 348; *Meier v. McBride*, 1995 Ohio App. LEXIS 749. See cf., *State ex rel. D'Alton v. Davis* (1915), 5 Ohio App. 43 (fair inference that the general assembly contemplated that a vacancy on a county commission might or might not be filled, depending on the judgment of the appointing power, and that business of the county would not come to a stop).

Conflicts of Interest

O.R.C. 340.02 prohibits governing board members and employees from engaging in the following dual roles in order to avoid conflicts of interest:

A governing board member or employee of a Board is prohibited from serving as a member of the governing board of any provider with which the Board has entered into a contract for the provision of services or facilities.

A governing board member of a Board is prohibited from being an employee of any provider with which the Board has entered into a contract for the provision of services or facilities. A person is not permitted to be an employee of both a Board and a provider unless the Board and provider both agree in writing.

Governing board members and employees of Boards are prohibited from having a spouse, child, parent, brother, sister, grandchild, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law that serves as a member of the governing board of any provider with which the Board has entered into a contract for the provision of services or facilities or that serves as a County Commissioner in any of the counties in the Board's service district.

In addition to these conflicts of interest that are specific to Boards, Ohio's ethics laws must also be considered when determining whether a potential conflict exists. For more information about Ohio's ethics laws, see the *Ohio Ethics Law* heading in the *Public Officials and Employees* section.

Training Requirement

Governing board members are required to attend at least one in-service training session each year that is provided or approved by OhioMHAS. O.R.C. 340.02.

Length of Term

For governing boards operating as eighteen member boards, each member must be appointed for a term of four years, commencing the first day of July, except that one-third of initial appointments to a newly established Board, and to the extent possible to expanded Boards, must be for terms of two years, one-third for terms of three years and one-third for terms of four years.

For governing boards operating as fourteen member boards, each member must be appointed for a term of four years, commencing the first day of July, except that four of the initial appointments to a newly established board, and to the extent possible to expanded Boards, must be for terms of two years, five initial appointments must be for terms of three years and five initial appointments must be for terms of four years.

Governing board members may not serve for more than two consecutive four-year terms under the same appointing authority. A member may serve for three consecutive terms under the same appointing authority only if one of the terms is for less than two years. A member who has served two consecutive four-year terms or three consecutive terms totaling less than ten years is eligible for reappointment by the same appointing authority one year following the end of the second or third term, respectively. O.R.C. 340.02.

Vacancy

When a vacancy occurs, appointment for the expired or unexpired term must be made in the same manner as the original appointment. The Board must notify the appointing authority of any vacancy by certified mail and the appointing authority must fill the vacancy within sixty days following that notice. O.R.C. 340.02

Resignation

As a public officer, a governing board member may resign from office if he/she so desires. A formal resignation should be directed in writing to the Board with copies to the appointing authority and the Director of OhioMHAS, as appropriate. The Board should formally accept the resignation, and place the letter of resignation with its records.

Removal

Any governing board member may be removed from office by the appointing authority for neglect of duty, misconduct or malfeasance in office, and must be removed by the appointing authority if the member is barred from serving due to a conflict of interest as described in O.R.C 340.02. The governing board member must be informed in writing of the charges and afforded an opportunity for a hearing.

Upon the absence of a board member within one year from either four Board meetings or from two Board meetings without prior notice, the Board must notify the appointing authority, which may vacate the appointment and appoint another person to complete the member's term.

Though not specifically stated in O.R.C. Chapter 340, the failure to attend the required in-service training session may be interpreted as neglect of duty and could be grounds for removal by the appointing authority. O.R.C. 340.02

Compensation

Members of the governing board must serve without compensation, but must be reimbursed for actual and necessary expenses incurred in the performance of their official duties, as defined by rules of OhioMHAS. O.R.C. 340.02. See the *Expenses* heading in the *Public Officials and Employees* section for a discussion of actual and necessary expenses.

Membership Reports

Annually, and upon any change in membership, each Board must submit to OhioMHAS a list of all current members of its governing board, including the appointing authority for each member and the member's specific qualification for appointment pursuant to O.R.C. 340.02 or 340.021, if applicable. O.R.C. 340.08(G).

Board Governance

It is recommended that Boards have policies in place that address board governance such as the board's governance process, member requirements, the relationship of the governing board and the Executive Director including delegation to the Executive Director and governing board duties, authority and limitations on authority.

Governing board members are considered to be "public officials" under Ohio law. Therefore, statutes that refer to the duties and requirements of public officials such as the ethics and sunshine laws should be addressed in board governance policies.

Governing Documentation and Performance of Necessary Duties

Pursuant to O.R.C. 340.03(B), the Board must establish rules, operating procedures, standards and bylaws, and perform such other duties as may be necessary or proper to carry out the purposes of O.R.C. Chapter 340.

The development of operating policies and procedures may be delegated by the governing board to the Executive Director or may be subject to review or approval by the governing board.

PART III

ADAMH/CMH/ADAS BOARD POWERS AND DUTIES

ADAMH/CMH/ADAS BOARD POWERS AND DUTIES

As creatures of statute, Boards only have those powers and duties that the General Assembly has either expressly or by necessary implication imposed on them.

The powers and duties specific to ADAMH, CMH, and ADAS Boards are mostly contained in O.R.C. Chapter 340 although Chapter 5119 and 5122 also contain applicable provisions. Any provision of the Revised Code that refers to a Board of Alcohol, Drug Addiction, and Mental Health Services with regard to mental health services also refers to a Community Mental Health Board and any provision that refers to a Board of Alcohol, Drug Addiction, and Mental Health Services with regard to alcohol and drug addiction services also refers to an Alcohol and Drug Addiction Services Board. O.R.C. 340.021(A)

In addition to the powers and duties that are specific to Boards, Boards must also comply with provisions of the Ohio Revised Code that are applicable to “political subdivisions” and “public offices” since Boards are considered to be those types of entities under Ohio law.

PLANNING AND SERVICES

Community Addiction and Mental Health Services Planning Agency

Pursuant to O.R.C. 340.03(A)(1), Boards serve as the community addiction and mental health services planning agency for the county or counties under their jurisdiction and as such are required to:

- (a) Evaluate the need for facilities and community addiction and mental health services;
- (b) In cooperation with other local and regional planning and funding bodies and with relevant ethnic organizations, assess the community addiction and mental health needs, evaluate strengths and challenges, and set priorities for community addiction and mental health services, including treatment and prevention.

When a Board sets priorities for the operation of addiction services, the Board must consult with the county commissioners of the counties in the Board's service district regarding the services described in section 340.15 of the Revised Code (i.e. services to the addicted parents, guardians, custodians or caregivers and the children of those individuals that have been referred to a community addiction services provider by a public children services agency that has identified the child as being at imminent risk of being abused or neglected because of the addiction of a parent, guardian, custodian or caregiver) and must give priority to those services in the Board's community addiction and mental health services plan, except that those services must not have a priority over services provided to pregnant women under programs developed pursuant to the requirements of O.R.C. 5119.17.

- (c) In accordance with guidelines issued by the Director of OhioMHAS after consultation with Board representatives, develop and submit to OhioMHAS a community addiction and mental health services plan listing community addiction and mental health services' needs, including the needs of all residents of the district currently receiving inpatient services in state-operated hospitals, the needs of other populations as required by state or federal law or programs, the needs of all children subject to a determination made pursuant to O.R.C. 121.38 (i.e. Family and Children First Council determinations regarding the services or funding for services a child is to receive from agencies represented on the Council); and priorities for facilities and community addiction and mental health services during the period for which the plan will be in effect.

ADAS Boards must submit a community addiction services plan and CMH Boards must submit a community mental health services plan. Each Board must consult with its counterpart in developing its plan and address the interaction between the local addiction services and mental health services systems and populations with regard to needs and priorities in developing its plan.

OhioMHAS must approve or disapprove the plan, in whole or in part, according to the criteria developed pursuant to O.R.C. 5119.22. Eligibility for state and federal funding is contingent upon an approved plan or relevant part of a plan.

If a Board determines that it is necessary to amend a plan that has been approved by OhioMHAS, the Board must submit a proposed amendment to the Director. The Director must inform the Board of the reasons for disapproval of all or part of an amendment and the criteria that must be met before the amendment may be approved. The Director must provide the Board an opportunity to present its case on behalf of the amendment. The Director must give the Board a reasonable time in which to meet the criteria and must offer the Board technical assistance to help it meet the criteria.

The Board must operate in accordance with the plan approved by the Department.

Proposed Services

Pursuant to O.R.C. 340.08(B), each Board must submit to OhioMHAS a statement identifying the services it intends to make available. The Board must include the services required by O.R.C. 340.03(A)(11) to be included in its continuum of care (See the *Continuum of Care* heading in this section) and the services required by O.R.C. 340.15 to be provided to children, or the parents, guardians and custodians of children, that have been identified by a PCSA as being at imminent risk of abuse or neglected because of an addiction of a parent, guardian or custodian.

The Board must explain the manner in which it intends to make those services available. The list of services must be compatible with the budget submitted pursuant to O.R.C. 340.08(A).

OhioMHAS must approve or disapprove the proposed listing of services to be made available. The Department must inform the Board of the reasons for disapproval of the listing of proposed services and of the criteria that must be met before listing of proposed services may be approved. The Director must provide the Board an opportunity to present its case on behalf of the submitted listing of proposed services, must give the Board a reasonable time in which to meet the criteria and must offer the Board technical assistance to help it meet the criteria.

Continuum of Care

Pursuant to O.R.C. 340.03(A)(11), the Board must establish, to the extent resources are available, a continuum of care that provides for prevention, treatment, support and rehabilitation services and opportunities. The essential elements of the continuum of care must include the following components:

- (a) To locate persons in need of addiction or mental health services to inform them of available services and benefits;
- (b) Assistance for persons receiving addiction or mental health services to obtain services necessary to meet basic human needs for food, clothing, shelter, medical care, personal safety, and income;

(c) Addiction and mental health services, including all of the following:

- (i) Outpatient;
- (ii) Residential;
- (iii) Partial hospitalization;
- (iv) Where appropriate, inpatient care;
- (v) Sub-acute detoxification;
- (vi) Intensive and other supports;
- (vii) Recovery support;
- (viii) Prevention and wellness management;
- (ix) An array of treatment and support services for all levels of opioid and co-occurring drug addiction that comply with the following O.R.C. 340.033 requirements: The array of opioid and co-occurring drug addiction services must include at least ambulatory and sub-acute detoxification, non-intensive and intensive outpatient services, medication-assisted treatment, peer mentoring, residential treatment services, recovery housing (see the *Recovery Housing* heading in this section), and twelve-step approaches. Each Board must have these treatment and support services available in its service district except for sub-acute detoxification and residential treatment services which may be made available through a contract with one or more providers of sub-acute detoxification or residential treatment services located in other service districts. The services must be made available in a manner that ensures that service recipients are able to access the services they need for opioid and co-occurring drug addiction in an integrated manner and without delay when changing or obtaining additional treatment or support services for such addiction and they are not denied a service on the basis that the service previously failed.

(d) Emergency services and crisis intervention;

(e) Assistance for persons receiving services to obtain vocational services and opportunities for jobs;

(f) The provision of services designed to develop social, community, and personal living skills;

(g) Access to a wide range of housing and the provision of residential treatment and support;

(h) Support, assistance, consultation, and education for families, friends, persons receiving addiction or mental health services, and others;

(i) Recognition and encouragement of families, friends, neighborhood networks, especially networks that include racial and ethnic minorities, churches, community organizations, and community employment as natural supports for persons receiving addiction or mental health services;

(j) Grievance procedures and protection of the rights of persons receiving addiction or mental health services;

(k) Community psychiatric supportive treatment services, which include continual individualized assistance and advocacy to ensure that needed services are offered and procured;

(l) Any additional component that OhioMHAS, pursuant to O.R.C. 5119.21, determines is necessary to establish the continuum of care.

Recovery Housing

Pursuant to O.R.C. 340.034, which becomes effective in September 2016, the following requirements apply to the recovery housing required by O.R.C. 340.033 to be included in the array of treatment services and recovery support for all levels of opioid and co-occurring drug addiction that are part of a Board's continuum of care:

- (a) Recovery housing is not subject to residential facility licensure by OhioMHAS.
- (b) Recovery housing may only be owned and operated by a Board if one of the following applies:
 - (i) The Board owns and operates the recovery housing on September 15, 2016.
 - (ii) The Board utilizes local funds in the development, purchase, or operation of the recovery housing.
 - (iii) The Board determines that there is a need for it to assume the ownership and operation of the recovery housing, such as when an existing owner and operator of the recovery housing goes out of business, and the Board considers the assumption of ownership and operation of the recovery housing to be in the best interest of the community.
- (c) Recovery housing must have protocols for all of the following:
 - (i) Administrative oversight;
 - (ii) Quality standards; and
 - (iii) Policies and procedures, including house rules, for its residents to which the residents must agree to adhere.
- (d) Family members of the recovery housing's residents may reside in the recovery housing to the extent the recovery housing's protocols permit.
- (e) A resident's duration of stay must not be limited to an arbitrary or fixed amount of time. Instead, each resident's duration of stay must be determined by the resident's needs, progress, and willingness to abide by the recovery housing's protocols, in collaboration with the recovery housing's owner and operator, and, if appropriate, in consultation and integration with a community addiction services provider.
- (f) The recovery housing may permit its residents to receive medication-assisted treatment.
- (g) A recovery housing resident may receive addiction services that are certified by the department of mental health and addiction services under O.R.C. 5119.36.

Public Children Services Agency Referrals

Boards must comply with OhioMHAS and Department of Medicaid requirements and procedures for prior notification and service coordination between public children services agencies (PCSA) and Boards when a PCSA refers a child in its custody to a Board for services funded by the Board. O.R.C. 340.16.

Residential State Supplement-Related Services

ADAMH and CMH Boards must contract with a community mental health services provider for the provider to do all of the following, in accordance with rules adopted under O.R.C. 5119.22 for an individual referred to the provider under O.R.C. 5119.41(D)(2):

- (a) Assess the individual and, if the provider determines that the environment in which the individual will be living while receiving residential state supplement payments is appropriate for the individual's needs, issue a recommendation to the referring residential state supplement administrative agency that the referring agency should conclude that the living environment is appropriate when it makes its determination regarding the appropriateness of the environment;
- (b) Provide ongoing monitoring to ensure that listed services submitted and approved under O.R.C. 340.08 (B) are available to the individual;
- (c) Provide discharge planning to ensure the individual's earliest possible transition to a less restrictive environment.

Title XX Grants

OhioMHAS and Boards must jointly administer the provision of social services funded through grants made under Title XX. O.R.C. 5101.46.

Consumer Involvement

Each Board is required to establish a mechanism for involvement of persons receiving addiction or mental health services on matters pertaining to addiction and mental health services in the Board's service district. O.R.C. 340.03(A)(15).

Medicaid Recipient Advocacy

Boards are permitted to advocate on behalf of Medicaid recipients enrolled in Medicaid managed care organizations and Medicaid-eligible individuals that have been identified as needing addiction or mental health services. O.R.C. 340.035.

Indigent Driver Treatment

ADAMH and ADAS Boards are required to administer the indigent drivers' alcohol treatment program of courts located in their service districts in accordance with the requirements of O.R.C. 4511.191.

Direct Provision of Services or Operation of Facilities

Pursuant to O.R.C. 340.03(A)(8)(b), and with the prior approval of the Director of OhioMHAS, a Board may operate a facility or provide an addiction or mental health service if there is no other qualified private or public facility or community addiction or mental health services provider that is immediately available and willing to operate such a facility or provide the service, in accordance with the following:

- (i) In an emergency situation, any Board may operate a facility or provide an addiction or mental health service in order to provide essential services for the duration of the emergency, including providing services directly to a severely mentally disabled person when life or safety is endangered and when no community mental health services provider is available to provide the service pursuant to O.R.C. 340.031(A)(13).
- (ii) In a service district with a population of at least one hundred thousand but less than five hundred thousand, a Board may operate a facility or provide an addiction or mental health service for no longer than one year;

- (iii) In a service district with a population of less than one hundred thousand, a Board may operate a facility or provide an addiction or mental health service for no longer than one year, except that such a Board may operate a facility or provide an addiction or mental health service for more than one year with the prior approval of the Director and the prior approval of the board of county commissioners, or of a majority of the boards of county commissioners if the district is a joint-county district.

The Director of OhioMHAS must not give a Board approval to operate a facility or provide an addiction or mental health service under points (i) or (ii) above unless the Director determines that it is not feasible to have the Department operate the facility or provide the service.

The Director is not permitted to give a Board approval to operate a facility or provide an addiction or mental health service under point (iii) above unless the Director determines that the Board will provide greater administrative efficiency and more or better services than would be available if the Board contracted with a private or public facility or community addiction or mental health services provider.

The Director is not permitted to give a Board approval to operate a facility previously operated by a person or other government entity unless the Board has established to the Director's satisfaction that the person or other government entity cannot effectively operate the facility or that the person or other government entity has requested that the Board take over operation of the facility. The Director is not permitted to give a Board approval to provide a community addiction or mental health service previously provided by a community addiction or mental health services provider unless the Board has established to the Director's satisfaction that the provider cannot effectively provide the service or that the provider has requested that the Board take over providing the service.

The Director must review and evaluate a Board's operation of a facility and provision of addiction or mental health services.

It is important to note that this section of Chapter 340 states that is not intended to authorize a Board to administer or direct the daily operation of any facility or community addiction or mental health provider other than under the circumstances described above. However, a facility or provider may contract with a Board to receive administrative services or staff direction from the Board under the direction of the governing body of the facility or provider.

MONITORING AND EVALUATION

Housing

Pursuant to O.R.C. 340.04(A)(14), Boards must ensure that housing built, subsidized, renovated, rented, owned or leased by the Board or a community addiction or mental health services provider has been approved as meeting minimum fire safety standards and that persons residing in the housing have access to appropriate and necessary services, including culturally relevant services, from a community addiction or mental health services provider. This does not apply to residential facilities licensed pursuant to O.R.C. 5119.34.

Certification Compliance

Boards must cooperate with the Director of OhioMHAS in visiting and evaluating whether the addiction or mental health services of a community addiction or mental health services provider satisfy the certification standards established by rules adopted under O.R.C. 5119.36. O.R.C. 340.03(A)(4)

Boards are also required, if requested by OhioMHAS, to assist providers that OhioMHAS has determined fail to satisfy certification standards in satisfying those standards and to reallocate funds for services from a provider who continues to fail in satisfying the standards for certification to another certified provider. 5119.36(C).

Program Audits

Conduct program audits, in accordance with criteria established under O.R.C. 5119.22(E), that review and evaluate the quality, effectiveness and efficiency of addiction and mental health services provided through its community addiction and mental health services providers and submit its findings and recommendations to OhioMHAS. O.R.C. 340.03(A)(6).

Investigate Abuse or Neglect Complaints

Boards are required to investigate, or request another agency to investigate, any complaint alleging abuse or neglect of any person receiving services from a community addiction or mental health provider, or of a resident receiving addiction services or with mental illness or severe mental disability residing in a residential facility licensed under O.R.C. 5119.34. If the investigation substantiates the charge of abuse or neglect, the Board must take whatever action it determines is necessary to correct the situation, including notification of the appropriate authorities. Upon request, the Board must provide information about such investigations to OhioMHAS. O.R.C. 340.03(A)(2).

In addition, O.R.C. 340.05 requires that when a Board receives a complaint or report from a community addiction or mental health services provider about the alleged abuse or neglect of an individual with mental illness or severe mental disability, or an individual that is receiving addiction services, who resides in a facility licensed under O.R.C. 5119.34 that is located in the Board's service district, the Board must report the complaint to the Director of OhioMHAS for the purpose of the Director conducting an investigation into the allegations. The Board also has the authority to enter the facility with or without the Director and, if the health and safety of a resident is in immediate danger, take any necessary action to protect the resident. The Board's actions must not violate any resident's rights specified in O.R.C. 5119.34 and the Board must immediately report its actions to the Director.

Client Complaints and Grievances

Boards must establish a procedure for addressing client rights complaints in accordance with OhioMHAS rules and submit to the Department a report summarizing complaints and grievances received by the Board concerning the rights of persons seeking or receiving services, investigations of complaints and grievances, and outcomes of the investigations. O.R.C. 340.08(E).

Forensic Monitoring

In conjunction with OhioMHAS, ADAMH and CMH Boards must operate a coordinated system for tracking and monitoring persons found not guilty by reason of insanity and committed pursuant to O.R.C. 2945.40 that have been granted a conditional release and for persons found incompetent to stand trial and committed pursuant to O.R.C. 2945.39 who have been granted a conditional release. The system must do all of the following: (i) centralize responsibility for the tracking of those persons (ii) provide for uniformity in monitoring them and (iii) provide a mechanism to allow prompt rehospitalization, reinstitutionalization, or detention when a violation of the conditional release or decompensation occurs. O.R.C. 340.08(D)

Audit

Boards must annually audit all programs and services provided under contract with the Board, in accordance with rules adopted by the Auditor of State pursuant to O.R.C. 117.20. In so doing, the Board may contract for or employ the services of private auditors. A copy of the fiscal audit report must be provided to the Director of OhioMHAS, the Auditor of State and the county auditor of each county in the Board's district. O.R.C. 340.03(A)(6).

RESIDENTIAL FACILITIES

The duties of ADAMH and CMH Boards described in this section are in addition to those imposed by any rules of OhioMHAS pertaining to residential facilities,

Residential Facility Applications

ADAMH and CMH Boards are required to review applications to operate a residential facility and provide to OhioMHAS any information about the applicants or the facilities that the Board would like the Department to consider in reviewing the applications. 340.03(A)(5).

Residential Facility Referrals

Boards must perform the duties required by rules adopted under O.R.C. 5119.22 regarding referrals by the Board or mental health services providers under contract with a Board of individuals with mental illness or severe mental disability to residential facilities licensed under O.R.C. 5119.34 and effective arrangements for ongoing mental health services for the individuals. The Board is accountable in the manner specified in the rules for ensuring that the ongoing mental health services are effectively arranged for the individuals. O.R.C. 340.03(A)(16).

Residential Facility Inspections

A Board is permitted to inspect any residential facility licensed under O.R.C. 5119.34 and located in its service district. O.R.C. 340.031(A).

SERVICE CONTRACTS

Pursuant to O.R.C. 340.03(A)(8), Boards must enter into contracts with public and private facilities for the operation of facility services and with public and private community addiction and mental health services providers for the provision of addiction and mental health services. Boards may only contract with residential facilities that are subject to O.R.C. 5119.34 if the facility is licensed by OhioMHAS. Boards may only contract with a community addiction or mental health services provider to provide addiction or mental health services if the services are certified by OhioMHAS under O.R.C. 5119.36.

In contracting with a community addiction or mental health services provider, a Board must consider the cost effectiveness of services provided by that provider and the quality and continuity of care, and may review cost elements, including salary costs, of the services to be provided. A utilization review process may be established as part of the contract for services. The Board may establish this process in the way that is most effective and efficient in meeting local needs. Ohio's competitive bidding requirements do not apply to such contracts.

Fee Schedules

The Board must approve fee schedules and related charges, or adopt a unit cost schedule or other methods of payment for contract services provided by community addiction or mental health services providers, in accordance with guidelines issued by OhioMHAS and as necessary to comply with state and federal laws pertaining to financial assistance. O.R.C. 340.03(A)(9).

Other Contract Considerations

The principal authority of ADAMH, CMH and ADAS Boards consists of their power, pursuant to O.R.C. 340.03(A)(8), to contract for the provision of mental health and addiction services. As the terms and conditions of such contracts may, to a significant extent, be determined, if not dictated, by the Board, careful consideration should be given to the contracting process.

General Form and Procedure

Every contract entered into by the Board must be reduced to writing and formally executed. It should be clear and definite as to each item, including the duties of all parties, the amount of each payment to be made (or the basis upon which each payment is to be calculated), the total amount to be expended under the contract, any pre-conditions to payment and the time at which payments are to be made. If any other documents, programs or plans are incorporated by reference into the contract, they should be clearly identified and, if they cannot be attached to the contract, their location should be clearly stated in the contract.

All contracts should be approved as to form by the legal advisor to the Board. If it proves impractical to have contracts approved individually, consideration should be given to preparation of a standard contract, approved by the legal advisor, which may be used in most instances. Deviations from this standard contract may then be approved by the legal advisor on an individual basis.

Certification

O.R.C. 5705.41(D) requires that before any contract involving the expenditure of funds is entered into, it must be presented to the county auditor serving as fiscal officer for the Board for certification that the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund, free from encumbrances. This certification need only be signed by the county auditor. Any contract entered into without the required certification is void and a warrant cannot be issued in payment of any amount due.

Where a contract is entered into on a per unit basis, the Board must make an estimate of the total amount to become due upon such contract, which estimate shall be certified in writing to the county auditor. Such a contract may be entered into if the appropriation covers such estimate, or so much thereof as may be due during the current year. In such a case the certificate of the county auditor based upon the estimate is sufficient compliance with the law requiring a certificate.

For more on certifications, refer to the “*Expenditure of Funds*” heading in the Administration and Finance section of this Handbook.

Adoption and Execution

After certification by the fiscal officer, the contract must be formally adopted by resolution of the governing board and duly entered upon its journal of proceedings. The resolution should designate by name those representatives of the Board who are authorized to sign the contract on behalf of the governing board.

The contract should be signed by authorized representatives of all parties to the contract, and an executed copy of the contract should be retained by all parties. It is suggested that the Board retain the original copies of all contracts in a central location (such as a file binder) where they are easily accessible when needed.

Terms

The Board is vested with broad authority in specifying the terms of contracts, as long as all expenditures are for public purposes within the general authority of the Board to contract for mental health and addiction facilities and services.

An audit of the Board will include a review of the form and procedural adoption and execution of contracts, and to the extent required by circumstances, an evaluation of the effectiveness with which the Board exercises its contracting authority. The following is a summary of contractual terms which should be addressed in each contract:

Property - There is no statutory requirement that property purchased with public funds be titled in the name of the Board; however, it is recommended that all contracts with contract providers include a provision that the title to all tangible personal property identifiable as purchased with public funds be in the name of the Board, and that if the relationship between the Board and contract agency is terminated, such property be returned to the Board. If the property is purchased in part with Board funds and in part with provider funds, the contract must provide for a settlement with the provider of the proportionate amount of the market value of the property. Property purchased with provider funds, the expense of which is not reimbursed or otherwise supported by the Board, will, of course, remain with the agency. Boards may also lease tangible personal property to contract providers; however, if the relationship between the Board and the contract provider is terminated, such property must be returned to the Board or purchased by the provider for the market value of the property.

It will be necessary for both the Board and the contract providers to maintain a detailed inventory of all such property, as described under the *Inventory* heading in the Administration and Finance section of the Handbook.

Fringe Benefits - The provision of fringe benefits, such as group health and group life insurance, would be an appropriate term to be included in a contract. 1977 O.A.G. 77-048.

Additionally, pursuant to O.R.C. 340.11, the Board is authorized to act as principal for contract providers in the procurement of insurance coverage for contract provider employees. The advantage is clear, due to the savings available in purchasing for a larger group. Any such joint purchase should be dealt with in the contract. The contract should specify the insurance coverage, the basis for allocation and the cost for the Board and contract agencies involved. Provisions should also be made for the payment of each provider's share, or a charge against their funds due from the Board.

Civil Rights Provisions - O.R.C. 340.12 states that no Board or agency, corporation or association under contract with a Board may discriminate in the provision of services under its authority, in employment, or contract on the basis of race, color, religion, sex, age, creed, disability, or national origin. In addition, pursuant to O.R.C. 5119.25, the Director of OhioMHAS may withhold state and federal funds from a Board that denies service based on those same classes. Therefore, it is recommended that each contract include a provision prohibiting discrimination, with the ramification of such discrimination being cancellation of the contract.

Clients' Rights - Since OhioMHAS requires that all providers and facilities under contract with Boards have a written policy addressing the rights of clients and the provider's grievance procedures, it is recommended that each contract include a provision requiring that the provider develop such policies.

Method of Payment - Boards may provide for payment on a grant, reimbursement, per unit basis, or any other method of payment as approved by the Board. O.R.C. 340.03(A)(9) mandates that each method of payment for contract services provided by contract providers be made in accordance with guidelines issued by OhioMHAS. Therefore, before initiating a payment method for contract services the Board must verify that they are in compliance with Department guidelines.

Boards must insure that payments to providers for services provided do not include reimbursement for expenses eligible for payment by federal grants, third-party payors or income from client fees. O.A.C. 5122:1-3-01.

Advanced funding may be used to avoid cash flow problems, but the terms and conditions of each funding advance must be specifically provided for in the contract. Any expenditures to a contract agency which are not pursuant to a properly adopted contract may result in finding for recovery directed against the contract provider, members of the governing board, and other officials who authorized or participated in authorizing payment, as circumstances warrant.

Consultants - O.R.C. 340.04(E) authorizes the Executive Director of the Board to employ and remove consultants as deemed necessary. The employment or removal of consultants by the Executive Director is subject to approval by the Board. It is recommended that the contract entered into between the parties state that the consultant is serving as an independent contractor.

Non-Renewal of Current Contract or Substantial Changes Proposed for Subsequent Contract

If either the Board or a facility or community addiction or mental health services provider with which the Board contracts proposes not to renew the contract or proposes substantial changes in contract terms, the other party must be given written notice at least one hundred twenty (120) days before the expiration date of the contract. During the first sixty (60) days of the one hundred twenty-day period, both parties must attempt to resolve any dispute through good faith collaboration and negotiation in order to continue to provide services to persons in need.

If the dispute has not been resolved sixty (60) days before the expiration date of the contract, either party may notify OhioMHAS of the unresolved dispute. The Director may require both parties to submit the dispute to a third party with the cost to be shared by the Board and the facility or provider. The third party must issue to the Board, the facility or the provider, and the Department, recommendations on how the dispute may be resolved twenty (20) days prior to the expiration date of the contract, unless both parties agree to a time extension. The procedures set forth in rule by OhioMHAS must be followed in the dispute resolution process.

PROVISION OF INFORMATION

Annual Report

Boards must submit to the Director of OhioMHAS and the county commissioners of the county or counties served by the Board, and make available to the public, an annual report of the services under the jurisdiction of the Board, including a fiscal accounting. O.R.C. 340.03(A)(10).

O.R.C. 5119.24 requires the annual report submitted to OhioMHAS to specify how the Board used funds allocated to it for administrative functions related to its continuum of care in the year preceding the report's submission. "Administrative function" refers to a function related to continuous quality improvement, utilization review, resource development, fiscal administration, general administration and any other function related to administration that is required by Chapter 340 of the Revised Code.

Data Compilation and Reporting

As of September 29, 2016, the "Compilation and Reporting of Data" requirements of O.R.C. 340.20 become effective. Per those requirements, Boards must do all of the following on a monthly basis in accordance with rules adopted under O.R.C. 5119.363:

- (a) Compile on an aggregate basis and submit to OhioMHAS the following information that community addiction services providers are required to provide to Boards each month under O.R.C. 5119.362:
 - i. An unduplicated count of all individuals who reside in a county that the Board serves and were included on the provider's waiting list as of the last day of the immediately preceding month and each type of treatment and support service for which they were waiting;
 - ii. The total number of days all such individuals had been on the provider's waiting list as of the last day of the immediately preceding month;
 - iii. The last known types of residential settings in which all such individuals resided as of the last day of the immediately preceding month (identified at least as either institutional or noninstitutional);
 - iv. The number of all such individuals who did not contact the provider after receiving, during the immediately preceding month, the notices required by O.R.C. 5119.362 to be sent to individuals on the provider's waiting list that slots are available for the individuals, and the reasons the contacts were not made;
 - v. The number of all such individuals who withdrew, in the immediately preceding month, their applications for the treatment and support services, each type of service for which those individuals had applied, and the reasons the applications were withdrawn;
 - vi. All other information specified in the rules.

For providers that provide services in more than one county and those counties are served by different Boards, the provider must provide separate reports to each of the Boards. The report must be specific to the county or counties the Board serves and not include information for individuals residing in other counties.

- (b) Determine, and submit to OhioMHAS, the number of applications for treatment and support services included in the Board's array of treatment and support services for all levels of opioid and co-occurring drug addiction that the Board received in the immediately preceding month and that the Board denied that month, each type of service so denied, and the reasons for the denials.
- (c) Report all other information required by the rules.

The information that Boards must submit to OhioMHAS must be reported in electronic format, in a manner that maintains the confidentiality of all individuals for whom information is included in the report, and in a manner that presents the information about the individuals whose information is included in the report by their counties of residence.

Community Behavioral Health Information System

Boards must submit information requested by OhioMHAS for its community behavioral health information system in the form and manner and in accordance with time frames prescribed by OhioMHAS. Information collected by the Department may include all of the following: information on services provided, financial information regarding expenditures of federal, state, or local funds and information about persons served. O.R.C. 5119.22(F).

Information Required by OhioMHAS

In addition to any specific requirements for submission of information to OhioMHAS, O.R.C. 340.08(H) states that Boards are required to submit other information to OhioMHAS as is reasonably required for purposes of the Department's operations, service evaluation, reporting activities, research, system administration, and oversight.

Court-Ordered Alcohol and Other Drug Abuse Treatment

ADAMH and ADAS Boards must submit on an annual basis the following lists to the clerk of the probate court in each county served by the Board: (i) a list of all hospitals in the counties served by the Board that are able and willing to take respondents ordered to undergo seventy-two hours of treatment and observation of who present an imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse and (ii) a list of hospitals and treatment providers in the counties served by the board that are able and willing to provide court-ordered treatment for alcohol and other drug abuse. O.R.C. 5119.97.

COLLABORATIVE AGREEMENTS

Boards are required to promote, arrange and implement working agreements with public and private social agencies and judicial agencies. O.R.C. 340.03(A)(1)(d).

Boards are also permitted to collaborate with other entities for reasons related to their statutory purposes. Many collaborate with one another to form consortiums, hubs, and collaboratives in order to accomplish the common goals of the member Boards. The following collaborations are governed by statute.

Councils of Governance

Boards may form Councils of Governance (COGS) with other political subdivisions, including other Boards, to assist one another and work towards common goals. O.R.C. Chapter 167.

Services To/From Other Governmental Entities

Boards, as political subdivisions, may enter into an agreement with another political subdivision or a state agency whereby one agrees to exercise any power, perform any function, or render any service for the other (that the receiving entity is otherwise legally authorized to exercise, perform, or render). If a power, function or service is to be performed within a political subdivision that is not a party to the agreement, the written consent of that political subdivision must first be obtained. O.R.C. 9.482.

Continuity of Care Agreements

O.R.C. 340.08(C) requires Boards to enter into a continuity of care agreement with the state institution operated by OhioMHAS and designated as the institution serving the district encompassing their service district. The continuity of care agreement must outline the Department's and the Board's responsibilities to plan for and coordinate with each other to address the needs of board residents who are patients in the institution, with an emphasis on managing appropriate hospital bed day use and discharge planning. The agreement is not permitted to require the Board to provide services other than those on the list of services submitted by the Board and approved by OhioMHAS pursuant to O.R.C. 340.08(B).

Hospital Facility Agreements

An ADAMH or CMH Board may enter into an agreement with “hospital agencies”, for purposes related to its statutory authority, for the acquisition, construction, reconstruction, rehabilitation, remodeling, renovating, enlarging, equipping, and furnishing of hospital facilities, or the management, operation, occupancy, use, maintenance, and repair of hospital facilities, or for participation in programs, projects, activities, and services useful to, connected with, supplementing, or otherwise related to the services provided by, or the operation of, hospital facilities operated by one or more participating hospital agencies, including any combination of such purposes.

ADAMH and CMH Boards are considered to be a “public hospital agency” or “hospital agency” for the purposes of such agreements and this section of the Ohio Revised Code. The purpose of such agreements is to “promote the public purpose of better providing for the health and welfare of the people of the state by enhancing the availability, efficiency, and economy of hospital facilities and the services rendered thereby, by providing for cooperation of hospital agencies in the utilization of shared facilities and services to obtain economies in operation and more effective health service, facilitating participation of hospital agencies in federal financial assistance provided by Title IV of the ‘Public Health Service Act’ ... and by other federal programs for assistance in meeting the costs of hospital facilities or the financing thereof, providing efficient operation of hospital facilities through leasing to hospital agencies and facilitating the financing of hospital facilities to be available to or for the service of the general public...”. O.R.C. 140.03.

COMMUNITY INVOLVEMENT

Boards often participate in and collaborate with other agencies and organizations in their service districts such as rehabilitation services commissions, diversion programs, disaster planning groups and school-related entities. In addition to organizations and agencies that Boards choose to collaborate with, the following are statutorily created entities that permit or require ADAMH, CMH and/or ADAS Board representation:

Local Corrections Planning Board - If a county establishes a local corrections planning board, the Executive Director of the Board or Boards serving that county, or their designee, must serve on that board. O.R.C. 5149.34.

Child Fatality Review Board - Executive Directors of ADAMH Boards, or their designees, must serve on child fatality review boards for each county in their service district. O.R.C. 307.622.

County Family and Children First Council - Executive Directors of Boards must serve on the county family and children first council for their service district. The Executive Director of a multi-county Board may designate a person to participate on the council. A Board may also be designated as the administrative agent for a county council. O.R.C. 121.37.

Child Abuse and Child Neglect Prevention Advisory Boards - When a board of county commissioners establishes a child abuse and child neglect prevention advisory board that is separate from the county's or region's family and children first council, the advisory board must include a provider of alcohol or drug addiction services OR a representative of the ADAMH or ADAS Board that serves the county or district and a provider of mental health services or a representative of the ADAMH or CMH Board that serves the county or district. O.R.C. 3109.18.

County Family Services Planning Committee - Boards may be appointed by the board of county commissioners to the county family services planning committee for the counties in a Board's service district. O.R.C. 329.06.

COURT-ORDERED COMMITMENTS AND HOSPITALIZATIONS

Ohio Revised Code Chapter 5122 governs the commitment and hospitalization of mentally ill persons subject to court order. ADAMH and CMH Boards have numerous duties in regards to such persons and processes. The following provides a detailed overview of Chapter 5122 but Boards should review the statute in its entirety to ensure compliance with its requirements.

Mentally Ill Persons Subject to Court Order

R.C. 5122.01 defines a mentally ill person subject to court order as a mentally ill person for whom, because of the person's illness, *at least one of the following applies*:

1. Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
2. Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
3. Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community;

4. Would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person;
5. Would benefit from treatment as manifested by evidence of behavior that indicates *all of the following*
 - i. The person is unlikely to survive safely in the community without supervision, based on a clinical determination.
 - ii. The person has a history of lack of compliance with treatment for mental illness and one of the following applies:
 - At least twice within the 36 months prior to the filing of an affidavit seeking court-ordered treatment of the person, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental health unit of a correctional facility. The 36-month period must be extended by the length of any hospitalization or incarceration of the person that occurred within those 36-months.
 - Within the 48 months prior to the filing of an affidavit seeking court-ordered treatment of the person, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others. The 48-month period must be extended by the length of any hospitalization or incarceration of the person that occurred within those 48-months.
 - iii. The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment.
 - iv. In view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to the person or others.

(NOTE: If only the criteria in this number 5 applies to a person and the criteria of numbers 1-4 do not, the person is only subject to court-ordered outpatient treatment and not hospitalization)

Emergency Admission (Pink Slip Procedure)

A psychiatrist, licensed clinical psychologist, licensed physician, health officer, police officer, sheriff or parole officer (“transporting official”) that: (1) has reason to believe a person is a mentally ill person subject to court order AND (2) represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, may take into custody and transport that person to a hospital or community mental health services provider for examination.

When a person is taken into custody and transported pursuant to this process, the law requires that “every reasonable and appropriate effort be made to take a person into custody in the least conspicuous manner possible”. The person taking the individual into custody is required to explain to following: the name and professional designation and affiliation of the person taking custody; that the custody-taking is not a criminal arrest; and that the person is being taken for examination by mental health professionals at a specified mental health facility identified by name.

A written statement, known as an “application for emergency admission” or more commonly a “pink slip”, must be completed and provided to the hospital or services provider detailing the circumstances under which the person was taken into custody and the reasons for the transporting official’s belief.

The person must be examined within twenty-four hours of arrival at the facility. After examination, if the chief clinical officer believes that the person is not a mentally ill person subject to court order, the person must be released or discharged immediately unless a court has issued a temporary order of detention applicable to the person. If the chief clinical officer believes that the person is a mentally ill person subject to court order, the person may be detained for up to three court days following the day of the examination. During that time the chief clinical officer must either file an affidavit for judicial

hospitalization or admit the person as a voluntary patient. If neither of those actions is taken by the end of the three-day period, and a court has not otherwise issued a temporary order of detention applicable to the person, the person must be discharged. O.R.C. 5122.10

Health Officers

ADAMH and CMH Boards may designate individuals as “Health Officers” that are authorized to be the transporting official in the emergency admission procedures described above. O.R.C. 5122.01.

Per O.R.C. 5122.43, Health Officers are authorized to receive payment for costs of their duties upon approval of the probate judge. These costs are to be reimbursed by OhioMHAS, but funding shortfalls often preclude this from occurring.

Judicial Admission (Affidavit Procedure)

Proceedings for a mentally ill person subject to court order are commenced by the filing of an affidavit in the manner prescribed by OhioMHAS and on the form prescribed in ORC 5122.111 with the probate court in the county where the mentally ill person subject to court order resides by any person that has reliable information, or actual knowledge, that another individual is a person with mental illness subject to court order.

The affidavit must include a statement of alleged facts sufficient to indicate probable cause that the person is a mentally ill person subject to court order and the specific category or categories of “subject to court order” that are believed to apply to that person. The affidavit may be accompanied by, or the court may require that it be accompanied by, certificates signed by a licensed psychiatrist, or both a licensed clinical psychologist and licensed physician, stating that the professional has examined the person and is of the opinion that the person is a mentally ill person subject to court order. If the person has refused to be examined by a licensed psychiatrist, or a licensed clinical psychologist and licensed physician, a written statement must also be provided by the filer of the affidavit, under oath, indicating that the person has refused to submit to such an examination.

If upon review, the probate court judge or magistrate has probable cause to believe that the person named in the affidavit is a mentally ill person subject to court order, a temporary order of detention may be issued ordering any health officer, police officer, or sheriff to take into custody and transport that person to a hospital, or other facility permitted by statute, pending examination or hearing. O.R.C. 5122.11.

Probate Court Proceedings

If upon receipt of an affidavit to initiate probate court proceedings, the court has probable cause to believe that the person named in the affidavit is a mentally ill person subject to court order, the judge will schedule a hearing. If not, the affidavit will be dismissed. O.R.C. 5122.11.

The court must send written notice of the hearing and a copy of the affidavit to: the person who is the subject of the hearing; the person’s legal guardian and spouse, if applicable; the parents of a minor; the person who filed the affidavit; a designated person or adult next of kin; legal counsel; the hospital or facility director; and the ADAMH Board or its designated community mental health services provider.

Initial Hearing:

An initial hearing must be conducted within five court days from the day on which the person is detained or an affidavit is filed, whichever occurs first, to determine whether or not the respondent is a mentally ill person subject to court order. If the person does not have an attorney, the court will appoint one.

If the court does not find that the respondent is a mentally ill person subject to court order, the person must be immediately discharged and all records of the proceedings must be expunged. If the court finds

that the respondent is a mentally ill person subject to court order, the court may issue an interim order of detention and a full hearing must be held within 30 days. O.R.C. 5122.141.

Full Hearing:

At the full hearing, the ADAMH Board's attorney and the person's attorney will present evidence. The court must decide if there is clear and convincing evidence that the person is a mentally ill person subject to court order. If not, the person must be immediately discharged. If so, the court must order the person to a hospital or other facility for a period of 90 days. Such facility must be the least restrictive setting available that is consistent with the person's treatment goals. A person that only meets the fifth standard in the definition of "mentally ill person subject to court order", above, is not subject to hospitalization and may only be committed to outpatient treatment.

At the expiration of the 90 days, an application for continued treatment may be filed if there is reason to believe that the person still meets the criteria for court-ordered treatment. Another hearing will be held to determine if the person is still a "mentally ill person subject to court order". O.R.C. 5122.15.

Court-Ordered Outpatient Treatment

For individuals that are committed to the Board, or a Board-designated services provider, the Board is responsible for determining the appropriate treatment for a person receiving court-ordered treatment in an outpatient setting. ORC 5122.15(F).

When a Board receives a notice that a court will be holding a hearing regarding the decompensation or failure to comply with a treatment plan of a person receiving court-ordered outpatient treatment, the Board is responsible for submitting a report to the court with a plan for alternative treatment or for recommending that the court discontinue the court-ordered treatment. ORC 5122.15(N).

Notification of Board of Residence

Upon application for the admission of a person pursuant to emergency or judicial procedures, the chief clinical officer of a hospital must immediately notify the Board of the patient's county of residence. O.R.C. 5122.05.

Voluntary Admissions

Voluntary admission to a public hospital must be authorized by the Board located in the person's county of residence. O.R.C. 5122.02. The Board must also be notified, when possible, of the pending release of a voluntarily admitted patient. Notification must come from the chief clinical officer of the public hospital before the patient is released but after the patient is informed that the Board will be notified. O.R.C. 5122.03.

Application for Services

Persons who have been hospitalized or committed may apply to the Board of their county of residence at any time for the services included in the Board's continuum of care. O.R.C. 5122.231.

Method for Evaluating Referrals and Affidavits

ADAMH and CMH Boards must establish a method for evaluating referrals for involuntary commitment and affidavits filed pursuant to O.R.C. 5122.11 in order to assist the probate division of the court of common pleas in determining whether there is probable cause that a respondent is subject to court-ordered treatment and whether alternatives to hospitalization are available and appropriate, if any. O.R.C. 340.031(A)(12).

Designation of Services, Provider or Facility

O.R.C. 340.031(A)(13) requires ADAMH and CMH Boards to designate the treatment services, provider, facility, or other placement for each person involuntarily committed to the Board. The Board must provide the least restrictive and most appropriate alternative that is available for any person involuntarily committed to it and must assure that the services available in its continuum of care are available to severely mentally disabled persons residing within its service district.

Procedures for Authorizing Payment

The Board must establish a procedure for authorizing payment for services to those involuntarily committed to the Board, which may include prior authorization in appropriate circumstances. O.R.C. 340.031(A)(13).

Overview of ADAMH/CMH Board Responsibilities under Chapter 5122

The following list is intended to provide a useful overview of ADAMH and CMH Board responsibilities pursuant to Chapter 5122. Please see the Ohio Revised Code for additional information about each of these requirements.

- Designate Health Officers. 5122.01(J)
- Provide services for a person whose residence is in dispute while residence is being determined and for a person in an emergency situation. 5122.01(S)
- Authorize voluntary admissions. 5122.02
- Receive notice from a public hospital before a voluntary patient is released. 5122.02
- Receive notice from CCO of hospital when admission for resident of Board area applied for under emergency or judicial procedures. 5122.05
- Promptly assess residents of Board area when notice received from hospital CCO of application for emergency or judicial admission (unless the Board or its designated agency has already performed an assessment) to assist the hospital in determining whether the patient is subject to involuntary hospitalization and whether alternative services are available. (*Board or Board-designated provider*) 5122.05
- Receive written notice of hearing from court after Affidavit of Mental Illness received by court for resident of Board area. (*Board or Board-designated provider*) 5122.12
- Review Affidavits of Mental Illness received from court and other information to assist the court in determining whether the person is subject to court-ordered treatment and whether alternatives to hospitalization are available (unless the services provider or Board has already performed such screening) and promptly make a report to the court. (*Board or Board-designated provider*) 5122.13
- Designate attorney to present the case demonstrating that a person is a mentally ill person subject to court order and deal with all subsequent court hearings. Designated attorney receives information about court proceedings and change in person's status. 5122.15(A)
- Receive court-ordered commitments. (*Board or Board-designated provider*) 5122.15(C)
- Receive updates about the progress of a person with his/her treatment plan when the person is committed to an entity or person other than the Board or a state hospital and the court order requires that person or entity to provide such information to the Board. (*Board or Board-designated provider*) 5122.15(D)
- Receive reports regarding the admission of a resident pursuant to a judicial proceeding from the CCO of the entity admitting the person, within ten working days of the admission. 5122.15(I)
- Comply with certain requirements before placing an unconsenting person in an inpatient setting from a less restrictive placement. (*Board or Board-designated provider*) 5122.15(L)
- Comply with certain requirements before moving a respondent from one residential placement to another. (*Board or Board-designated provider*) 5122.15(M)

- Submit report to court with a plan for alternative treatment or recommend that the court discontinue the court-ordered treatment, upon receiving notice that the court will hold a hearing regarding the decompensation or failure to comply with a treatment plan of a person receiving court-ordered outpatient treatment. 5122.15(N) (SB 43 amendment-effective 9/17/2014)
- Determine the appropriate treatment for a person receiving court-ordered treatment in an outpatient setting that is committed to the Board or a Board-designated services provider. (*Board or Board-designated provider*) 5122.15(F)

** Note: Actions/requirements marked with “Board or Board-designated provider” denote sections of Chapter 5122 that specifically reference an action being performed by the Board or its designated provider(s). This does not preclude Boards from delegating other Chapter 5122 actions/requirements to their designated providers as well.*

PART IV

**PUBLIC OFFICIALS
AND
EMPLOYEES**

PUBLIC OFFICIALS AND EMPLOYEES

ADAMH, CMH and ADAS Boards are considered to be “public offices” under Ohio law and Board employees and governing board members are “public officials”. Therefore, in addition to the provisions of Ohio law that are specific to ADAMH, CMH and ADAS Boards, their employees and their governing board members, the requirements of Ohio law that apply to public offices and public officials must be adhered to as well.

CIVIL SERVICE SYSTEM

Chapter 124, Revised Code, establishes the Civil Service System, which governs the appointments, employment and removal of employees of the State, County, City and other political subdivision.

Boards are employers of persons governed by the Civil Service Laws. O.R.C. Section 124.01(A) defines “Civil Service” as follows:

Civil Service includes all *offices and positions of trust or employment in the service of the State and the Counties, cities, city health districts, general health districts, and city school districts thereof.* [Emphasis added]

Thus, employees of Boards may not be appointed, removed, laid off, suspended, promoted, reinstated or reduced, other than as provided in O.R.C. Chapter 124, or pursuant to the rules promulgated thereunder by the State Department of Administrative Services or as provided in applicable collective bargaining agreements pursuant to O.R.C. Chapter 4117, except as otherwise noted below. Section 124.11, Revised Code, provides that all employees in the civil service are either in the unclassified or the classified service. O.R.C. 124.11(A)(18) states that the executive directors, deputy directors, and program directors of ADAMH, CMH and ADAS Boards and the secretaries of those executive directors, deputy directors, and program directors are in the unclassified service. All civil service employees not specifically placed in the unclassified service by Section 124.11 are automatically in the classified service. The status of unclassified employees differs from that of classified employees. Unclassified employees serve at the pleasure of the appointing authority and may be terminated at will for any cause or for no cause. Unclassified employees are appointed without taking civil service examinations and may take part in partisan political activity.

EMPLOYEE DATABASE

As public offices, Boards are required to maintain a database or a list that includes the name and date of birth of all employees they employ. The database or list is a public record and must be made available upon receipt of a public record’s request for such information. O.R.C. 149.434.

COMPENSATION

Authority

The authority to determine the compensation of employees of a Board is vested in the Executive Director of the Board pursuant to O.R.C. 340.04(E), which provides the following authority to the Executive Director:

Employ and remove from office such employees and consultants in the classified civil service and, subject to the approval of the Board, employ and remove from office such other employees and consultants as may be necessary for the work of the Board, and fix

their compensation and reimbursement within the limits set by the salary schedule and the budget approved by the board;

While the statutes provide for the authority of the Board to compensate its employees, it does not specifically set forth the manner in which employees of the Board are to be paid. This lack of specificity has raised various issues regarding the payment of compensation and will be discussed below.

Retroactive Compensation

The Attorney General, in 1981 O.A.G. 81-011, overruled prior opinions which held that Article II, Section 29, Ohio Constitution, prohibited units of local government from granting retroactive increases in compensation to employees. Such increases may be granted to employees by a Board.

Overtime Compensation

Pursuant to O.R.C. 4111.03, employees are entitled to compensation at one and one-half times their normal rate of pay for hours actually worked in excess of forty (40) hours per week, subject to the exemptions of Section 7 and Section 13 of the Federal Fair Labor Standards Act of J 93811,52 Stat. 1060, 29 U.S.C. 207, 213, as amended. Executive, administrative and professional employees are exempted from this coverage. Specifics about the classification of positions for purposes of this exemption may be obtained from the Wage and Hour Division of the Employment Standards Administration within the United States Department of Labor. It is also important to note that both the Fair Labor Standards Act and state law permit state and local government employers to compensate employee overtime with compensatory time off instead of overtime pay under certain conditions. The advice of legal counsel should be sought regarding the application of the overtime compensation requirements.

Fringe Benefits

"Compensation" as that term is used in O.R.C. 340.04(E), with respect to Board employees, is properly defined as including the payment of fringe benefits. 1975 O.A.G. 75-084. On the basis of this and similar decisions, it is clear that insurance benefits, holidays and vacation benefits are within the discretionary authority of the governing board and the Executive Director to jointly determine the compensation of Board employees. 1982 O.A.G. 82-006. The Board should formally adopt policies in each of these areas.

Sick Leave

The authority of the Board and the Executive Director to grant sick leave to Board employees is limited by O.R.C. 124.38, which prescribes the amount of sick leave which must be granted and regulates its use. Each employee is entitled to accrue 4.6 hours of sick leave per bi-weekly pay period, on the basis of time in active pay status. Unused sick leave may accumulate without limit and may be used by the employee, on approval of the proper administrative officer, for absence due to personal illness, pregnancy or injury, and illness, injury or death in the employee's immediate family.

The appointing authority must require an employee to furnish a written, signed statement justifying the use of sick leave, and, if medical attention is required, a certificate from a licensed physician stating the nature of the illness. A record must be kept for each employee showing the amount of sick leave accrued by pay period and the amount of sick leave used by pay period. Falsification of any written statement of a physician's certificate is grounds for disciplinary action, including dismissal.

It should be noted that O.R.C. 124.38 establishes only the minimum sick leave benefits; a Board may establish greater benefits if it desires to do so. Any increased benefits earned by the employee become vested rights. *Ebert v. Stark County Board of Mental Retardation*, 63 Ohio St. 2d 31 (1980).

EXPENSES

Governing board members and Board Executive Directors are authorized to be reimbursed for "actual and necessary expenses incurred in the performance of their official duties" pursuant to O.R.C. 340.02 and 340.032. As to public employees generally, it has been stated that:

... a public employee may lawfully be reimbursed from public funds for traveling and other personal expenses actually and necessarily incurred by him in the performance of public duty...

... the determination of the lawfulness of the allowance of traveling and other personal expenditures of a public officer or employee when in the performance of his public duties requires consideration of pertinent questions of fact, and *is thereby reduced to a pure question of auditing...*(emphasis supplied) 1930 O.A.G. 30-2170, 1241.

Reimbursement

Expenditures for personal expenses of a public officer or an employee are limited to the reimbursement of expenses actually incurred. Before reimbursement may be made, satisfactory evidence must be presented that an expenditure was actually incurred. Such evidence must consist primarily of official receipts, which should be presented in accordance with a formal policy adopted by the Board. Consideration will be given, however, in the course of an audit, to items for which it is impractical to obtain receipts, such as bridge and highway tolls, taxi fares, etc. In the event it is more practical, the Board may adopt a policy whereby an officer or employee is given an advancement. Arrangements may be made where upon presentation of receipts, the officer or employee is reimbursed for any expenses in excess of the advancement, or return the excess advanced funds.

Necessary Expenses

Expenditures, to be eligible for reimbursement, must be necessary to the performance of the duties of the public officer or employee. For example, it is clear that gratuities are not a reimbursable expense unless they are, in fact, a mandatory service charge included in the billing. 1940 O.A.G. 40-2021.

The Auditor of State will not, as a rule, take exception to the reimbursement of governing board members' expenses for dinners at Board meetings within the district. Such expenses may be reimbursed for Board members and for employees and third parties if the Board determines that: (1) Such expenditures are necessary to a function of duty of the Board which is expressly granted by the statute or is necessarily implied therefrom; and (2) Such expenditures serve as a valid public purpose. 1982 O.A.G. 82-006.

Mileage

Both governing board members and employees may be reimbursed for the use of private automobiles on public business, with the limitation that mileage to and from home and work is not reimbursable to employees. Governing board members may be reimbursed for mileage for

legitimate Board functions both within and beyond the district. Reimbursement must be at a reasonable rate as determined by the Board.

Limitation on Amount

There is no statutory dollar limitation upon the amount that may be reimbursed to governing board members and employees, as long as expenses are otherwise reimbursable. A Board may, of course, impose its own limitations upon the amounts, which it will reimburse. Such limitations should be adopted as a formal policy of the Board. If the Board wishes, limitations for state employees, as set by the Office of Budget and Management, may be used as guidelines in formulating a policy.

Other Limitations

O.R.C. 340.02 states that governing board members must be reimbursed for actual and necessary expenses, but *only* as defined by the rules of OhioMHAS. Therefore, where any doubt exists as to the propriety of a particular item of expense, the Department should first be consulted.

One final note bears mentioning: There is *no* authority for the reimbursement of expenses incurred by a spouse, relative or any other traveling companion of a governing board member, Executive Director or employee. Accordingly, the Auditor of State recommends use of the following guideline. When the traveler (i.e., the board member, Executive Director or employee who is on official business) stays at a hotel or motel, he should ask the innkeeper the rate of double occupancy and the rate for single occupancy. The rate for single occupancy should be shown on the bill and submitted with the expense voucher for reimbursement, with the difference between the single and double occupancy rates being paid by the traveler.

Similar action should be taken into account for expenses for transportation and meals, with separate billing for the traveler and the companion.

In the event that the entire expenditure is reimbursed, including the portion of the spouse, relative, etc., who is not there on Board business, a finding for recovery for the difference will be issued by the Auditor of State against the non-complying employee or officer.

Additional guidance can be found in Auditor of State Technical Bulletins 2003-05 and 2004-02, which indicate, among other things, that the expenditure of funds for alcoholic beverages is never considered to be for a proper public purpose.

OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM

Employees of Boards are "public employees" as defined in O.R.C. 145.01(A). 1967 O.A.G. 67-104. As such, membership in the Ohio Public Employees Retirement System is compulsory upon appointment, subject only to the exclusions from membership set forth in O.R.C. 145.02(A), and exemptions from membership set forth in O.R.C. 145.03.

Exclusions and Exemptions

Public employees contributing to or receiving disability benefits from a municipal retirement system established prior to June 30, 1938, or who have been granted a disability retirement allowance by the State Teachers Retirement System or School Employees Retirement System, or who are contributing to the Police and Firemen's Disability and Pension Fund or the State Highway Patrol Retirement System are excluded from membership in OPERS. O.R.C. 145.02. In addition, student employees whose employment will not exceed fifteen hundred (1500) hours in a calendar year and new employees whose employment will not exceed twenty (20) hours a week

may choose to be exempt from compulsory membership by signing a written application for exemption within the first month after being employed. O.R.C. 145.03. Temporary or emergency employees whose employment will not exceed three calendar months may also be exempted from compulsory membership upon written application within the first month after employment. O.R.C. 145.03.

Employees who are employed by a private temporary help service, or employed on a contractual basis only, or employed under a personal service contract, do not become members of PERS. O.R.C. 145.03.

OPERS Funding and Service

OPERS is funded by employee and employer contributions and investment income and limited by appropriations by the Ohio General Assembly. Benefits include retirement, disability, death and survivor benefits. Additional information concerning funds, benefits, and OPERS in general may be obtained from the Ohio Public Employees Retirement System, whose address is listed at the front of this Handbook.

Contract Agencies

Employees of providers contracting with a Board pursuant to O.R.C. 340.03(A)(8)(a) to provide mental health and addiction services and the operation of facility services, may become members of OPERS only if they are "public employees" as defined in O.R.C. 145.01 (A). In most instances, this will not be the case, as the contracting agencies are private organizations. Attention is directed, however, to a portion of O.R.C. 145.01 (A), which states that:

..."Public employee" also means a person who is a member of the retirement system and who continues to perform the same or similar duties under the direction of a contractor who has contracted to take over what before the date of the contract was a publicly operated function. The governmental unit with which such contract has been made shall be deemed the employer for the purpose of administering Chapter 145 of the Ohio Revised Code...

Thus, where mental health or addiction services have been provided by a facility operated directly by a Board pursuant to O.R.C. 340.03(A)(8)(b) and the service is subsequently taken over by a contract provider, with employees of the Board carried over to service the contract provider and perform the same or similar duties, such employees retain their OPERS membership, and the Board is responsible for administering O.R.C. Chapter 145, as it applies to such employees.

It is important to note that this provision applies only where such a transfer of responsibility from the Board to a contract provider occurs, and affects only those employees working for the Board who are transferred at the time the contract provider assumes responsibility for operating the facility. Any subsequent employees hired by the contract agency are not eligible for OPERS membership under this provision, as they are not "public employees". 1972 O.A.G. 72-055.

Similarly, employees of a Board who transfer their employment to a contract provider do not necessarily retain their OPERS membership. Membership is retained only if a contract provider is taking over activities of the Board, including those of the individual in question. Thus, a Board may not routinely hire individuals as Board employees to qualify them for OPERS, with the intention of immediately thereafter transferring them to a contract provider, while retaining their OPERS membership. The membership will, in fact, be retained only if the facts of the particular case fall within the reasoning of 1972 O.A.G. 72-055. In case of doubt, questions as to eligibility should be submitted to the Ohio Public Employees Retirement System for resolution.

Retirement Incentive Plan

Boards are considered to be “employing units” with respect to any retirement incentive plans that they establish for eligible employees. O.R.C. 145.297.

UNEMPLOYMENT COMPENSATION

O.R.C. 4141.242 extends unemployment compensation coverage to all employees of public entities in the State of Ohio, whether in the classified or unclassified service, full-time, part-time or temporary, except as noted below. Public entity employers, including ADAMH, CMH, and ADAS Boards, are subject to the law whenever they have at least one individual in employment. They must report to the Ohio Department of Job and Family Services, the office or official responsible for the administration of their employment compensation accounts.

Exclusions from Coverage

Five general categories of employees are specifically exempted from coverage. These include publicly elected officials, members of the legislative and judiciary branches, National Guard members, and major non-tenured policy making and advisory positions. Policy-making positions involving less than eight (8) hours a week are exempt.

Funding and Benefits

Public entity employers are exempt from paying any of the administrative costs of the unemployment compensation program. They may pay for benefits through either a reimbursement or contributory method. Additional information as to funding methods, mandatory reports and the unemployment compensation system in general should be directed to the Ohio Department of Job and Family Services, 30 E. Broad Street, 32nd Floor, Columbus, Ohio 43215-3414.

Collective Bargaining

Although ADAMH, CMH, and ADAS Boards are not specifically enumerated in Section 4117.01 (B), Revised Code, as a public employer, the broad definition of a public employer will allow employees working directly for a Board to be included within the Collective Bargaining Act.

CONFLICTS OF INTEREST

The subject generally referred to as "conflict of interest" includes at least three (3) areas of concern to public offices and employees. These are: (1) criminal liability for an unlawful interest in a public contract, comprehensively treated in O.R.C. 2921.42; (2) criminal liability for violations of the Ohio Ethics Law, O.R.C. Chapter 102; and (3) the concept of incompatibility of office, judicial in origin, and a possible threat to one's eligibility for office.

Unlawful Interest in Public Contract

Criminal liability for an unlawful interest in a public contract may arise in expected circumstances. A "public official," as defined in O.R.C. 2921.01, for purposes of O.R.C. 2921.42, includes not only elected and appointed public officials, but also employees and agents of political subdivisions. Thus, both Board members and Board employees are subject to possible criminal liability under this provision of law, and should be familiar with its provisions.

For purposes of O.R.C 2921.42, "public contract" means any of the following:

- (1) The purchase or acquisition, or a contract for the purchase or acquisition of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either; or
- (2) A contract for the design, construction, alteration, repair, or maintenance of any public property.

It is important to stress that it is not necessary that a public official be aware of the illegality of his interest in the contract, so long as he is aware that the interest does exist. If such an interest exists, criminal liability may result from any of the following activities:

- (1) Use of one's office to obtain a contract for oneself, a member of his family, or a business associate, or to obtain the investment of public funds for which oneself, a member of his family, or a business associate has an interest. (Note: For purposes of O.R.C. 2921.42, the term "a member of his family" includes, but is not limited to: grandparents, parents, spouse, children, whether dependent or not, grandchildren, brothers and sisters, or any person related by blood or marriage and residing in the same household. Ethics Opinion 80-001);
- (2) During one's tenure of office, or within one year thereafter, having any interest in a contract let by oneself, or a Board or commission on which one has served;
- (3) Having an interest in a contract for any agency in which one serves; or
- (4) Having an interest in a public contract not let by competitive bidding when required by law, and which involves more than one hundred fifty dollars (\$150.00).

The purpose of this section is to ensure that public agencies stand on at least an equal footing with others with respect to necessary business dealings. Accordingly, the section does not prohibit public servants from all dealings in which they may have some interest, no matter how remote. It prohibits only those dealings in which there is a risk that private considerations may detract from serving the public interest. Thus, in the absence of bribery or intent to defraud, a public servant, member of his family, or any of his associates are not considered as having an interest in a public contract when all of the following apply, O.R.C. 2921.42(B):

- (1) The interest is limited to ownership or control of shares of the corporation, or being a creditor of the corporation or organization which is the contractor on the public contract, or issuer of securities which are the subject of the investment of public funds;
- (2) Shares owned or controlled do not exceed five (5) percent of those outstanding, or the amount due such person as creditor does not exceed five (5) percent of the total indebtedness of the corporation; and
- (3) Prior to the date the contract is entered into, the individual files with the governmental entity involved an affidavit of his status with the corporation or organization.

Finally, even if the requisite action and interest for criminal liability are present, this section is inapplicable to a public contract in which a private servant, a member of his/her family, or a business associate has an interest, if all of the following are present, O.R.C. 2921.42(C):

- (1) The subject of the contract is necessary services or supplies of the governmental entity involved;

- (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are furnished as part of a continuing course of business established prior to the public officials association with the governmental entity;
- (3) The treatment accorded the governmental entity is preferential to or the same as that accorded others in similar transactions; and
- (4) The transaction is conducted at arms-length with the full knowledge of the governmental entity as to the interest involved, and the public official takes no part in the deliberation or discussion with respect to the contract.

Penalties for violation of O.R.C 2921.42 vary, with fines of up to \$2,500.00 and terms of imprisonment of up to five (5) years. As a result, it is firmly advised that all public officials seek the advice of counsel before entering into a contract with a potential conflict of interest.

Ohio Ethics Law

The Ohio Ethics Law, O.R.C. Chapter 102, was enacted by the General Assembly (Effective January 1, 1974, HB 55, 135th General Assembly) to protect the integrity of government. It applies to public officials (including governing board members) and employees, and is, therefore, applicable to all governing board members and employees. Provisions of the law include public official and employee restrictions and limits on outside compensation. These restrictions may be summarized as follows:

- (1) They are forbidden, during public employment and for twelve (12) months thereafter, from representing a client or acting in a representative capacity for any person on any matter in which the official or employee personally participated through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other "substantial exercise of administrative discretion". (Note: The above does not include the performance of ministerial functions, such as filing tax returns, applications for permits and licenses, incorporation papers, and other similar documents. It also does not prohibit a former official or employee from being retained to represent the public agency by which he was employed or on whose Board he served);
- (2) They may not during public service or employment, or any time thereafter without appropriate authorization, disclose or use any information acquired in the course of official duties which is confidential because of statutory provisions, or which has been designated as confidential and preserving that confidentiality is necessary to the proper conduct of government business;
- (3) At no time during their tenure of office or employment may they participate in a license proceeding which affects the license of any person to whom they, their immediate family, or a business association of which they own or control more than five (5) percent has sold goods or services totaling more than one thousand dollars (\$1,000) in the preceding year, unless they have filed the proper statement with the public agency involved; and
- (4) They are prohibited from using or attempting to use their official position to secure anything of value to them, which they would not ordinarily secure in the performance of their official duties. O.R.C. 102.03.

Public officials are also subject, pursuant to O.R.C. 102.04(A), to a prohibition upon outside compensation. They may not "receive or agree to receive directly or indirectly compensation other than from the agency with which they serve for any service rendered or to be rendered by them personally in any case, proceeding, application, or other matter" that is before the entity of

which they are an officer or employee.

The Ohio Ethics Commission may receive, initiate and investigate complaints of violations of the Ohio Ethics Law. If it determines that there is reasonable cause to believe that a violation has occurred, it will conduct a hearing. If it then finds, by a preponderance of the evidence, that a violation has occurred, the evidence will be turned over to the appropriate prosecuting attorney. Persons convicted of a violation may be fined up to one thousand dollars (\$1,000.00), or sentenced to six (6) months in jail, or both.

It should also be noted that O.R.C. 102.09(D) requires that within fifteen days of any public official or employee, including governing board members and the Executive Director of the Board, beginning the performance of official duties, the public agency with which the official or employee serves, or the appointing authority, must furnish the official or employee with a copy of O.R.C. Chapter 102 and Section 2921.42, and may also furnish such other materials as the appropriate ethics commission prepares for distribution. The official or employee must acknowledge this receipt in writing.

The Ohio Ethics Commission will render advisory opinions on matters related to conflict of interest. The telephone number to contact the Ohio Ethics Commission is (614) 466-7090.

Incompatibility of Office

It is well-established in Ohio by court decisions that certain positions of public employment or public office are inherently incompatible -- that one person cannot serve in both positions. This common law rule was set forth in *State, ex rel. Attorney General v. Gebert*, 12 Ohio C.C.R. (N.S.) 274, at page 275 (1909);

... Offices are considered incompatible when one is subordinate to, or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both...

Physical incompatibility is a matter of fact to be determined on the particular circumstances of each case. Incompatibility of office requires that the duties, responsibilities, and authority of each position be evaluated to determine if incompatibility is, in fact, present. A clear example of incompatibility would occur when one individual was serving both as a member of a governing board and as an employee of the Board. One position is answerable to the other, and thus, they are incompatible under the Gebert definition.

It should also be noted that certain positions are incompatible by statutory provision. In the event that doubt exists as to the compatibility of positions, the advice of legal counsel should be sought. Alternatively, the Board may wish to seek a written opinion from the Ohio Ethics Commission.

The Attorney General, in 1979 O.A.G. 79-111, has set forth seven (7) basic questions to be addressed when a question of compatibility of office arises. These are:

- (1) Is either of the positions a classified employment within the terms of O.R.C. 124.57?
- (2) Do the empowering statutes of either position limit the outside employment permissible?
- (3) Is one office subordinate to or in any way a check upon the other?
- (4) Is it physically possible for one person to discharge the duties of both positions?
- (5) Is there a conflict of interest between the two positions?

(6) Are there local charter provisions or ordinances which are controlling?

(7) Is there a federal, state, or local departmental regulation applicable?

Other Limitations

In order to round out the discussion of conflicts of interest by governing board members and employees, the specific relationships of ADAMH, CMH and ADAS that are prohibited by O.R.C. 340.02 previously addressed in the Board Governance section are restated below:

Governing board members and employees are prohibited from serving as members of the governing board of any provider with which the Board has entered into a contract for services or facilities;

Governing board members of a Board are prohibited from being an employee of any provider with which the Board has entered into a contract for services or facilities. A person is not permitted to be an employee of a Board and a provider unless both the Board and the provider agree in writing.

Governing board members and employees of Boards are prohibited from having a spouse, child, parent, brother, sister, grandchild, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law that serves as a member of the governing board of any provider with which the Board has entered into a contract for the provision of services or facilities or that serves as a County Commissioner in any of the counties in the Board's service district.

It should be noted that a violation of one of these limitations may also constitute a violation of the Ohio Ethics Law or O.R.C. 2921.42. For example, if a person accepted appointment to a governing board who was also a governing board member of a private contract provider, that person would be in violation of the Ohio Ethics Law, O.R.C. Sections 340.02 and 2921.42. See Ethics Opinion 81-003.

Some illustrative examples are as follows:

1. A person may serve concurrently as a member of a governing board and as a member of a city board of education; 1979 O.A.G 79-049;
2. Pursuant to O.R.C. 340.02, a school principal may not serve on the governing board of an ADAMH, CMH, or ADAS when his employing school has contracted with the Board. 1981 O.A.G. 81-101.

BONDING

There is no statutory requirement that governing board members or employees of a Board be bonded. It is to the advantage of the board members and the service district, however, that adequate bonds be obtained to cover loss which might be reasonably expected to occur as a result of fraudulent or dishonest acts, failure to faithfully perform duties, or failure to account for all monies received in the performance of their duties, by governing board members or employees. Bonding of employees will reduce the possibility that board members will be held personally liable for a loss caused by a dishonest employee, and bonding of board members will insure that the district will not suffer financial loss due to actions of board members.

Purchase of a blanket bond for employees is authorized by O.R.C. 3.06. The bond will be

approved as to form and sufficiency by the Board and should be filed with the records of the Board.

LIABILITY

Article I, Section 16, Ohio Constitution, provides that: ... “suits may be brought against the state, in such courts and in such manner, as may be provided by law”...

It has repeatedly been held by the courts of this state that this section is not self-executing, but requires the passage of legislation to activate it. As a result, until very recently neither the state nor instrumentalities of the state, such as counties and townships, were subject to suit in tort. This immunity from suit was removed insofar as the state was concerned with the enactment of O.R.C. Chapter 2743 (effective January 1, 1975), which established the Court of Claims to handle suits against the state. The legislation specifically excluded from the waiver of immunity political subdivisions of the state. The recent trend of decisions of the Ohio Supreme Court has significantly eroded the doctrine of sovereign immunity. However, governing board members and employees are given a measure of protection under O.R.C. 340.03 (D), which currently states in part the following:

No board member or employee of a Board of alcohol, drug addiction, and mental health services shall be liable for injury or damages caused by any action or inaction taken within the scope of the board member's official duties or the employee's employment, whether or not such action or inaction is expressly authorized by this section or any other section of the Revised Code, unless such action or inaction constitutes willful or wanton misconduct.

This provision offers immunity, not only for injuries or damages caused by any action of a board member or employee, but also for any injuries or damages as a result of any inaction by a member or employee. The exception to this rule is where the action or inaction of the member or employee constitutes willful or wanton misconduct. Conduct will not constitute willful or wanton misconduct if:

- (1) the board member or employee acted in good faith and in a manner that the member or employee reasonably believed was in or not opposed to the Board's best interests; or
- (2) with respect to a criminal action or proceeding, the board member or employee had no reasonable cause to believe the conduct was unlawful.

However, it should be noted that this statute provides only a qualified immunity. First, it covers only action or inaction taken by a governing board member or employee while within the scope of official duty or employment. Tortious acts committed outside the scope of a member's or employee's official duties are not protected. Secondly, acts involving willful or wanton misconduct, as defined by that section, are also unprotected.

In addition, 5122.34 provides immunity to persons, including Boards and community mental health services providers, that procedurally or physically assist in the hospitalization or discharge, determination of placement, court-ordered treatment, or in judicial proceedings of a person, if they are acting in good faith upon actual knowledge or information thought by them to be reliable.

Finally, no person may be held liable for any harm that results to any other person as a result of failing to disclose confidential information about a mental health client or failing to otherwise attempt to protect that other person from harm by the client.

In addition to these statutory protections, Boards are authorized to procure with public funds insurance coverage to insure board members and employees of the Board against liability arising from the performance of their official duties. O.R.C. 340.11. Boards may also purchase insurance coverage for providers under contract with the Board.

As stated earlier, a Board may be indemnified for conduct that does not constitute willful or wanton misconduct. In addition, if insurance is unavailable or the amount the Board has procured is insufficient to cover the claim, the Board may indemnify the member or employee against all expenses. Indemnification of such expenses includes attorney fees that the board member or employee reasonably incurs as a result of a proceeding, or expenses incurred in defense of a claim, issue, or matter raised in connection with the defense of the member's or employee's action or inaction, to the extent the member or employee is successful on the merits or otherwise.

Finally, it should be noted both a Board and its governing board members and employees may be liable under 42 U.S.C. Section 1983 if, while acting under color of law, they cause any individual to be deprived of any federal civil rights. Such an action is not barred by Article I, Section 16, Ohio Constitution. If any allegations of such misconduct are made, legal counsel should be sought immediately.

EXECUTIVE DIRECTOR

The individual responsible for the day-to-day administration of a Board is the Executive Director. O.R.C. 340.032 states that a governing board may delegate to its Executive Director the authority to act on the Board's behalf in the performance of its administrative duties.

Appointment and Qualification

It is the duty of the governing board to employ the Executive Director. O.R.C. 340.032 requires only that the Executive Director be "a qualified mental health or addiction services professional with experience in administration or a professional administrator with experience in mental health or addiction services." Beyond this general description of qualifications, no other statutory requirements exist. Therefore, the governing board must exercise its discretion in selecting a person that is properly qualified for the position.

For the purposes of an Executive Director's qualifications, "mental health professional" and "addiction services professional" mean an individual who is qualified to work with mentally ill persons or persons receiving addiction services, pursuant to standards established by the Director of OhioMHAS under O.R.C. Chapter 5119.

It is recommended that a governing board enter into a written employment contract with the Executive Director detailing duties and authority, compensation including fringe benefits, performance evaluations, termination of employment and other details and conditions of the employment arrangement.

Compensation

The compensation of the Executive Director is fixed by the governing board pursuant to O.R.C. 340.032. As there is no statutory limitation, this is also a matter left to the sound discretion of the Board members.

In addition to his/her salary, the Executive Director must also be reimbursed for all actual and necessary expenses that he/she incurs in the performance of official duties. For a detailed discussion of allowable expenses, see the *Expenses* heading in the *Public Officials and Employees*

section.

Duties

The primary duties of the Executive Director are statutory in nature. These duties are mandatory and are listed in O.R.C. 340.04. They include:

- (1) Serving as an executive officer of the Board and executing contracts on its behalf (subject to the prior approval of the governing board for each contract);
- (2) Supervising the services and facilities provided, operated, contracted, or supported by the Board to ensure that programs are being administered in conformity with O.R.C. Chapter 340 and the rules of the Director of OhioMHAS;
- (3) Providing consultation to community addiction and mental health services providers providing services supported by the Board;
- (4) Recommending to the board those changes necessary to increase the effectiveness of addiction and mental health services and other matters necessary or desirable to carry out O.R.C. Chapter 340.
- (5) Employing and removing employees and consultants and fixing their compensation and reimbursement within the limits set by the salary schedule and budget approved by the governing board (Note: employment and removal of unclassified employees and consultants is subject to prior approval by the governing board);
- (6) Encouraging the development and expansion of preventive, treatment, rehabilitative, and consultative services in the field of addiction and mental health services with emphasis on continuity of care;
- (7) Preparing for governing board approval an annual report of the services and facilities under the Board's jurisdiction, including a fiscal accounting of all services;
- (8) Conducting studies, as necessary and practicable for the promotion of mental health and addiction services and the prevention of mental illness, emotional disorders, and addiction; and
- (9) Authorizing the county auditor (or in a joint county district, the county auditor designated as the auditor for the district) to issue warrants for the payment of Board-approved obligations, provided that all payments from funds distributed to the Board by OhioMHAS are in accordance with the budget submitted pursuant to O.R.C. 340.08 and approved by OhioMHAS.

In addition to the above listed duties, the governing board may, in its discretion, prescribe additional duties to be carried out by the Executive Director. O.R.C. 340.032.

Removal

As a general rule, the Executive Director serves at the pleasure of the governing board. As noted in a previous section of this Handbook, Executive Directors of Boards are deemed by statute to be "unclassified" employees. Thus, they do not enjoy all of the rights and privileges afforded to classified employees. Although Executive Directors are unclassified, they may not be summarily dismissed by the governing board. The proper procedure for removal is contained in O.R.C. 340.032. An Executive Director may be removed only for cause, and only then by a majority vote

of the full membership of the governing board (not a majority vote of a board quorum). Formal, written charges must be drawn and, upon request, the Executive Director must be afforded an opportunity for a hearing before the board. Only after these requirements have been met may an Executive Director be removed.

It is recommended in all cases that a periodic review of the performance of the Executive Director be conducted. This review should be in writing, and maintained with the records of the Board.

LEGAL COUNSEL

Single-County Boards

Pursuant to O.R.C. 309.09, the county prosecutor is the general legal counsel for single-county Boards. The Board "may require written opinions or instructions from him in matters connected with their official duties". In addition, the prosecutor, in his/her role as legal advisor, is required to defend all suits and actions which the Board directs or to which it is a party. Thus, in most instances, the county prosecutor will serve as counsel for the Board.

Joint-County Boards

With respect to access to county prosecutors, joint-county Boards differ from single-county Boards. Due to their multi-county nature, there is no authority for the prosecuting attorney of any county participating in a given district to provide general legal counsel to a joint-county Board. Therefore, joint-county Boards are *not* entitled to the services of any particular county prosecutor within the district. 1975 O.A.G. 75-014.

Private Counsel

Both single and joint-county Boards may, under O.R.C. 340.04 (E), employ private legal counsel. In the case of single-county Boards, however, approval must first be obtained in accordance with O.R.C. 305.14.

The compensation to be paid to private counsel is a matter left to the direction of the governing board, with the assistance of the Executive Director. It need not be set at a specific dollar amount, so long as some clear standard by which the amount of compensation is to be calculated is contained within the order of compensation made by the Board. (Such compensation may include fringe benefits.) For example, an agreement that compensation is to be at a rate of \$150.00 per hour for a set maximum of hours would be sufficiently specific.

Whenever a Board retains private counsel, it is imperative that the nature of the relationship between the Board and the attorney be clearly established at the onset. This involves a determination of whether the attorney will serve the Board as an "employee" or an "independent contractor". This distinction may become critical later on because the status of the attorney may determine the extent to which the Board is obligated to pay fringe benefits to the attorney, as well as the extent to which immunity from suit will be applied.

A very important decision in this area was handed down by the Ohio Attorney General in 1980 O.A.G. 80-098. Although that decision dealt with private counsel retained by a Board of township trustees, arguably, the same principles would apply to ADAMH, CMH and ADAS Boards, or to any public agency. The opinion was important because it stated that the compensation and fringe benefits due to an attorney from a public agency were determined by the status of the attorney, i.e., whether he/she was an "employee" or an "independent contractor". Where private counsel is deemed an "employee" of the public agency, he/she is entitled to whatever discretionary fringe benefits the agency grants to its other employees, provided that he/she qualifies for such benefits.

Those benefits may include sick leave, vacation, hospitalization and life insurance coverage. However, an attorney who is only an independent contractor is only entitled to be compensated pursuant to contract; he/she is not entitled to discretionary fringe benefits.

As to statutory fringe benefits, an attorney-employee is entitled to those benefits for which he/she qualifies, including holiday pay, membership in PERS and workers' compensation. But an attorney-independent contractor is not entitled to holiday pay under O.R.C. 325.19. He/she may be covered by workers' compensation or unemployment compensation, but only if the agency procures such coverage for him/her. Whether an attorney-independent contractor is included in the PERS system is a matter for determination by the Public Employees Retirement Board.

With reference to the attorney's eligibility for these benefits based upon status, 1980 O.A.G. 80-098 delineates the standards for determining such status. First, all of the relevant facts and circumstances surrounding the agreement between the agency and the attorney must be examined. These factors include:

- (1) The degree of independence to act which the attorney possesses;
- (2) Whether the attorney performs legal services solely for that public agency;
- (3) Whether the attorney is paid for particular services or is paid a yearly salary;
- (4) Whether the public agency provides office space and/or supplies for the attorney; and
- (5) Whether the attorney has the right to hire assistants and the obligation to pay such assistants.

Thus, the importance of the employee / independent contractor distinction is clear. If a Board desires to avoid obligations that would accrue to an attorney-employee, then certain formalities should be observed. The Board should spell out, in a written contract, the attorney's status as an independent contractor, the total compensation to be paid (i.e., that there are no fringe benefits, or if fringe benefits are to be given, the agreement should specify and limit them), and that the attorney is being compensated only for particular services and only pursuant to the terms of the contract. This procedure will help to avoid potential liability on the part of the Board and the state for unintended fringe benefits.

The Auditor of State will, in the normal course of events, refrain from issuing a finding for recovery for illegal expenditures of public funds where the expenditure in question is undertaken pursuant to a formal, written, good faith opinion of the legal advisor to the Board. It is essential that the opinion be presented to the Auditor before the conclusion of the audit. Where such an opinion is properly presented, the audit report may indicate that the Auditor of State is in disagreement with the legal advisor.

CONSULTANTS

Pursuant to O.R.C. 340.04 (E), the Executive Director of a Board may employ and remove such consultants as may be necessary for the work of the Board. The Executive Director may also fix their compensation and reimbursement, but must do so within the limits set by the salary schedule and the budget approved by the governing board.

If it is determined desirable to retain a consultant on a contract basis, the contract should be between the individual and the Board, in conformity with the general provisions as to contracting, including the certification requirements set forth in this text. The formal action of the governing

board approving such contracts should indicate the basis of the decision to contract for such services.

AFFIRMATIVE ACTION AND DISCRIMINATION

Chapter 340 requires that each Board and each community addiction or mental health services provider must have a written affirmative action program that includes goals for the employment and effective utilization of, including contracts with, members of economically disadvantaged groups, as defined in O.R.C. 122.71(E)(1) in percentages reflecting as nearly as possible the composition of the Board's service district. Each Board and provider must file a description of the affirmative action program and a progress report on its implementation with OhioMHAS. O.R.C. 340.12.

Additionally, O.R.C. 340.12 states that all Boards and the services providers they contract with are prohibited from discriminating in the provision of services under its authority, in employment, or under a contract on the basis of race, color, religion, sex, creed, disability, national origin, or age. O.R.C. 340.12.

PART V

ADMINISTRATION AND FINANCE

ADMINISTRATION AND FINANCE

BOARD MEETINGS

Procedure

An ADAMH, CMH or ADAS Board, upon its creation and annually thereafter, should elect a chairman to serve as presiding officer. As no specified procedural rules have been designated for such Boards, the governing board should adopt as quickly as possible its own rules, which should be entered into the record. It is suggested that a common authority, such as Robert's Rules of Order, be selected.

Open Meeting Requirement

Meetings held by the governing boards of ADAMH, CMH and ADAS Boards and any committee established by those Boards are considered to be meetings of a public body subject to O.R.C. 121.22 (B)(1) and are therefore subject to the Open Meetings Act. O.R.C. 340.03(E). The Ohio Attorney General's Sunshine Laws Manual, which can be found on the Attorney General's website, is a comprehensive resource to use in understanding and applying the requirements of the Open Meetings Act.

Executive Session

Pursuant to O.R.C. 121.22(G), an executive session may be held in private when the subject matter under consideration by the governing board or a committee includes any of the following (*Note: The following list of subject matter for which executive session is permitted only includes those that may be applicable to Boards*):

- (1) Personnel matters (unless the employee or official requests a public hearing, i.e., promotion, appointment, demotion, dismissal. . . of public employee);
- (2) Purchase or sale of property, where premature disclosure of information would give an advantage to an individual;
- (3) Conferences with legal counsel concerning pending or imminent court action that involve the Board;
- (4) Collective bargaining;
- (5) Matters required by federal law or state statutes to be kept confidential; or
- (6) Discussion of security measures and emergency response protocols, disclosure of which could reasonably be expected to jeopardize the security of the Board.

It should be noted that consideration of at least one of the above-listed matters must be the sole purpose for the executive session. Consideration of other subject matter as exempted from the "open meeting" requirement would be improper. Before the governing board may hold an executive session, the motion and vote must state which one or more of the approved matters will be considered during the executive session. Additionally, a majority of a quorum of the governing board must be determined by roll call vote to hold such a session. O.R.C. 121.22 (G).

If the governing board meets in executive session to consider the appointment, employment, dismissal, discipline, promotion, demotion or compensation of a public employee, official, licensee or regulated individual who did not request a public hearing, then the board's motion and

vote to hold the executive session must state which one or more of the approved aforementioned purposes are the purposes for which the executive session is to be held, but need not include the name of any person being considered at the meeting. O.R.C. 121.22(G)(1). Simply stating that the purpose of the executive session is “personnel” is not legally sufficient under O.R.C. 121.22(G)(1).

Any formal action of the governing board as to matters discussed in executive session must be taken in an open meeting. If the statutory requirements of O.R.C. 121.22 are not followed as to matters discussed in executive session, such formal action is invalid. Minutes of a meeting need only generally reflect matters discussed in an authorized executive session. However, they must be promptly recorded and open to public inspection. O.R.C. 121.22 (C).

Minutes

Boards must keep minutes of all meetings of the governing board, which are to be promptly prepared, filed, and maintained, and must be available for public inspection. O.R.C. 121.22. Such minutes should be recorded in a journal of proceedings.

The journal of proceedings is an important record for the Board, as it serves as the formal record of action by the governing board. Incompleteness or obscurity of the record inevitably creates doubt as to the quality of the governing board's work or its willingness to submit its actions to scrutiny.

All formal actions of the governing board, particularly all actions involving the expenditures of public monies, should be set forth in detail in the record. This would include, but is not limited to: details of all contracts entered into by the Board; employment, appointment, or delegation of duties to the Executive Director; the adoption of compensation and fringe benefit schedules; submission and acceptance of reports; adoption of tax budgets and appropriation measures; transfers of funds; large purchases of materials and supplies; leasing and purchasing of property; and the approval of bills for payment.

(a) Approval of Bills for Payment

In accordance with O.R.C. 340.10, Boards must authorize the payment of a bill and recommend payment by the county auditor before any funds of the Board may be expended. The responsibility for the approval of payment may be delegated to the Executive Director if the governing board so desires.

Approval of payment must be taken at a regular or special meeting of the governing board, supported by a resolution duly adopted by the board. The following are *recommended*:

- (1) A list of bills to be approved is to be prepared setting forth the name of each vendor, voucher number, purpose of expenditure, appropriate code, fund to be charged and the amount due for payment. The listing should contain a statement approving the vouchers for payment and ordering the auditor to issue his/her warrant;
- (2) The itemized list, together with the vouchers drawn to the individual vendors, is presented to the board. The vouchers should contain invoices supporting the items for which payment is claimed, the fund, appropriation code, date of allowance and a reference identifying the resolution approving same;
- (3) Upon approving the vouchers, the governing board members sign the itemized list, instead of each voucher. The secretary of the board should then record the approved

itemized list in the record of proceedings; and

- (4) The reference identifying the approving resolution is to be placed upon each voucher. One copy of the approved itemized list, together with the vouchers drawn to the individual vendors, is presented to the county auditor. The county auditor must then prepare and issue his/her warrant on the treasurer.

With regard to these procedures, the attention of the Board is directed to O.R.C. 5705.45, which imposes personal liability upon any public officer or employee for wrongful payment of public money. Irrespective of O.R.C. 5705.45, the determination as to whether an expenditure constitutes a valid public purpose is to be made solely by the Board. The county auditor must not substitute its judgment for that of the Board's regarding what constitutes an expenditure for a public purpose. If the county auditor questions the validity of an expenditure that is within available appropriations and for which a proper order or voucher and evidentiary matter is presented, the auditor shall notify the Board. If the Board determines that the expenditure is valid and the county auditor continues to refuse to issue the appropriate warrant on the county treasury to pay the voucher, the Board, pursuant to O.R.C. 319.16, may seek a writ of mandamus from the court to compel the auditor to issue the warrant.

(b) Formal Action by Executive Director

Although not required by statute, it is recommended that all formal actions by the Executive Director, particularly significant personnel actions, be reported to the governing board and entered into the journal in some detail. This will not only protect the Executive Director from any subsequent misunderstandings, but will facilitate audits of the Board, thereby reducing the time and expense involved.

Notice of Meetings

The Board must, pursuant to O.R.C. 121.22, establish a method by which any person may determine the time and place of all regularly scheduled meetings, and the time, place and purpose of any special meeting. A special meeting may not be held unless twenty-four (24) hour notice is given to all news media that have requested notification. If an emergency meeting is called, those members calling the meeting must notify such news media of the time, place and purpose of the meeting.

RECORDS

A number of other records are required to be kept by the Board in addition to minutes of meetings. Virtually every public entity to which the Board is accountable requires that records be kept. To protect the interests of the public and of the individuals about whom reports are maintained, laws have been enacted governing the destruction, disclosure, and confidentiality of public records. Ohio's Public Records Act governs the retention and destruction of public records. The Attorney General's Sunshine Laws Manual, which can be found on the Attorney General's website, is a comprehensive resource to use in understanding and applying the requirements of the Public Records Act.

O.R.C. 149.43(A)(1) defines "public records" as any records kept by any public office except the following (*Note: This list only contains the public records exceptions that may be applicable to Boards*):

1. Medical records;

2. Adoption records;
3. Probation records;
4. Records pertaining to proceedings related to the imposition of community control sanctions and post-release control sanctions;
5. Trial preparation records;
6. Confidential law enforcement investigation records;
7. Records for which the release is otherwise prohibited by state or federal law;
8. Intellectual property records; and
9. Certain records related to child fatality review boards.

Availability of Public Records

O.R.C. 149.43 provides that all public records must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. The individual responsible for the records must make copies available, at cost, within a reasonable period of time. "Public record" for such purposes includes any records required to be kept by any governmental unit, except, but not limited to, medical records, trial preparation records, confidential law enforcement records, adoption, probation and parole proceedings, and records for which the release is prohibited by state or federal law.

Destruction of Public Records

Boards must operate under a records commission to ensure records retention schedules are in order and disposal of records is occurring in accordance with approved retention schedules. In recent years, legislation has been enacted that classifies both single county and joint-county Boards as "special taxing districts" for the purposes of their records commissions, as confirmed by the Ohio Attorney General in 2013 Op. Att'y Gen. No. 13-006. In that opinion, the Attorney General stated that "...consideration of all the factors used in determining whether an entity is a county office leads to the conclusion that a single county ADAMH district is not a county office for purposes of R.C. 149.38. Therefore, a single county ADAMH district is not subject to the jurisdiction of a county records commission... Because a single county ADAMH district is not subject to the jurisdiction of any other records commission created by R.C. Chapter 149, it is subject to the jurisdiction of a special taxing district records commission." It has long been understood that joint-county Boards are not considered to be county offices. Therefore both single and joint-county Boards must comply with the requirements that are applicable to special taxing district records commissions.

Pursuant to O.R.C. 149.412, the records commission of a special taxing district must be composed of, at a minimum, a chairperson, a fiscal representative, and a legal representative of the governing board of the Board. The commission must meet at least once every twelve months and upon the call of the chairperson. The functions of the commission are to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the special taxing district. The commission may dispose of records pursuant to the procedure outlined in O.R.C. 149.381. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule

under the procedure outlined in that section.

O.R.C. 149.412(B) permits a single-county Board, upon mutual assent between the Board and the board of county commissioners for that county, to designate the county records commission as the records commission for the Board. That designation authorizes the county records commission to exercise all of the duties and responsibilities of a special taxing district records commission as described above. The mutual assent may be manifested in an agreement defining the terms and conditions under which the county records commission is to perform public records-related functions, including establishing records retention and destruction schedules, on behalf of the special taxing district. A multi-county Board is required to be its own records commission and does not have the option to designate a county records commission to act on its behalf.

If a Board's records commission has approved records for destruction, it is necessary to obtain approval of the Auditor of State. If the Auditor of State disapproves the destruction, in whole or in part, the Auditor of State will inform the commission within sixty (60) days, and the records may not be destroyed. In addition, before public records are destroyed, the commission must notify the Ohio Historical Society and give sixty (60) days to select for custody records of continuing historical value. O.R.C. 149.38(C)

Personal Information Systems Act

O.R.C Chapter 1347 contains restrictions on the maintenance of personal information systems. Every state or local agency that maintains a personal information system is required to inform a person who is asked to supply personal information for a system whether the person is legally required to, or may refuse to, supply the information. Upon request, the agency must (i) inform a person of the existence of any personal information in the system of which the person is the subject (ii) permit the person to inspect all personal information in the system of which the person is the subject, in most instances and (iii) inform the person about the types of uses made of the personal information, including the identity of any users usually granted access to the system.

Agencies must take reasonable precautions, as specified in the statute to protect the personal information in the system from unauthorized modification, destruction, use, or disclosure and must notify affected individuals if the security or confidentiality of their personal information has been compromised. O.R.C. 1347.05.

Information contained in the system may be used only in accordance with the stated purpose of the system and must allow access to the system under conditions enumerated in the statute. It should be noted that O.R.C. Chapter 1347 does not restrict access to records that are public under O.R.C. 149.43. (See 1980 O.A.G. 80-096.)

An agency may be enjoined from violation of the statute, and a purposeful refusal to comply with the statute is a minor misdemeanor. *O.R.C. 1347.99.*

Disclosure of Information Regarding Persons Receiving Community Mental Health and Addiction Services

Boards must be familiar with the state and federal laws protecting the confidentiality of information pertaining to individuals receiving mental health and addiction services.

The Federal Drug and Alcohol Confidentiality Law (42 CFR Part 2), applies to the records of individuals who received or are receiving services from federally-assisted drug or alcohol programs. It is a very restrictive law that provides very few exceptions to the requirement that client authorization be obtained prior to using or disclosing an individual's protected information.

Although Boards are not directly subject to 42 CFR Part 2, information they receive from addiction providers is, and Boards must comply with its requirements in regards to safeguarding and making further disclosures of that information. It is important for Boards to understand 42 CFR Part 2 so that they understand how information pertaining to clients receiving addiction services can be received and disclosed and to ensure that providers are obtaining the necessary releases that permit Boards to receive and further release protected information.

Boards are considered to be health plans pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (45 CFR Parts 160, 162, and 164) and must therefore comply with the requirements of HIPAA's Privacy Rule (45 CFR Parts 160 and Subparts A and E of 164) in regards to the use and disclosure of client information. Boards must also comply with the administrative requirements of the Privacy Rule as well as HIPAA's Security Rule and Breach Notification Rule.

State law also contains requirements for the disclosure of client information. The records of mental health clients are governed by O.R.C. 5119.28 and the records of clients receiving addiction services are governed by O.R.C. 5119.27. For the most part, both of those statutes are in line with their federal counterparts in regards to the disclosure of such records.

FUNDING

Funding for mental health and addiction services and facilities comes from a variety of sources including OhioMHAS discretionary funding, revenues from levies, funding driven by statutory provisions, and grants received from both public and private sources. The county commissioners in a Board's service district may also appropriate money to Boards. This section discusses the some of those funding sources in more detail.

Ohio Department of Mental Health and Addiction Services Funding

The discretionary funding that OhioMHAS receives as part of the state budget process is a combination of state and federal funds.

O.R.C. 340.09 requires OhioMHAS to provide assistance to each county for all of the following using funds the general assembly appropriates for these purposes:

- (a) operation of the ADAMH, CMH, ADAS Board(s) serving the county;
- (b) provision of services approved by OhioMHAS within the continuum of care established pursuant to O.R.C. 340.03(A)(11);
- (c) provision of approved support functions which may include the following:
 - (i) consultation
 - (ii) research
 - (iii) administrative
 - (iv) referral and information
 - (v) training
 - (vi) service and program evaluation
- (d) partnership in, or support for, approved continuum of care-related activities.

As previously discussed under the heading of *Community Addiction and Mental Health Services Planning Agency*, eligibility for state and federal funding is contingent upon an approved community addiction and /or mental health services plan or relevant part of a plan.

Proposed Budget/Application for Funds

Pursuant to O.R.C. 340.08(A), Boards must submit to OhioMHAS a report of receipts and

expenditures for all federal, state, and local moneys the Board expects to receive in accordance with the following:

- i. The report must identify funds the Board has available for the array of treatment and support services for all levels of opioid and co-occurring drug addiction required to be included in the Board's continuum of care.
- ii. The report must identify funds the Board and public children services agencies in the Board's service district have available to jointly fund the services required by O.R.C. 340.15 to be provided to children, or the parents, guardians and custodians of children, that have been identified by a PCSA as being at imminent risk of abuse or neglect because of an addiction of a parent, guardian or custodian.

Approval/Disapproval/Amendment of Budget

The Board's proposed budget for expenditures of state and federal funds distributed to the Board by OhioMHAS shall be deemed an application for funds, and OhioMHAS must approve or disapprove the budget for these expenditures.

Pursuant to O.R.C. 340.08(A)(3) OhioMHAS must disapprove the Board's proposed budget if it does not make available in the Board's service district the essential elements of the continuum of care required by O.R.C.340.03(A)(11). The Department must inform the Board of the reasons for disapproval and of the criteria that must be met before the budget may be approved. The Director must provide the Board an opportunity to present its case on behalf of the submitted budget, must give the Board a reasonable time in which to meet the criteria and must offer technical assistance to help it meet the criteria.

If a Board determines that it is necessary to amend a budget that has already been approved, the Board must submit a proposed amendment to the Director. The Director may approve or disapprove all or part of the amendment. The Director must inform the Board of the reasons for disapproval of all or part of the amendment and the criteria that must be met before the amendment may be approved. The Director must provide the Board an opportunity to present its case on behalf of the amendment, must give the Board a reasonable time in which to meet the criteria and must offer technical assistance to help it meet the criteria.

Eligibility for Funding

Any Board or combination of Boards can receive funds appropriated for such purposes by the General Assembly. Appropriated funds are disbursed to Boards only for services included in the budget approved by OhioMHAS. In order to obtain funds that are processed through OhioMHAS, a Board must comply with all requirements specific to the program and funding source and ensure through contract that providers are also in compliance with those requirements. O.A.C. 5122:1-3-01(D)(2).

Allocation Method

All funds appropriated are disbursed in the amounts and as designated by line items of the current appropriations bill. The funds available to each Board are allocated on an annual basis subject to quarterly review of appropriations levels. The federal funds processed through the Department are allocated in accordance with state and federal regulations. O.A.C. 5122:1-3-01(D)(3).

Payment Schedules

State funds are disbursed to Boards on a quarterly basis or a schedule set by the award, subject to state cash flow limitations. The total amount of state funds that can be awarded to any given Board is limited by the current appropriations bill for each line item. Payments of Board obligations by the county auditor, or in a joint-county district, the county auditor designated as the fiscal agent for the district, must be in accordance with the budget approved by the Director. Unless otherwise stated, all state and federal funds disbursed by the Department to the Boards, must be spent or obligated for budgeted services or administrative operations by the close of the state fiscal year. Federal funds processed through the Department are disbursed to Boards in accordance with state and federal regulations. O.A.C. 5122:1-3-01(D)(4).

Auditing Standards

Boards receiving funds from the Department are audited by the state auditor's office. A copy of the audit report must be forwarded to the Department within thirty days following its receipt by the Board. A copy of the audited financial statements, the opinion issued, and any management letters must be forwarded to the Department within thirty days following its receipt by the Board. O.A.C. 5122:1-3(D)(6) The Board must file an annual financial report with OhioMHAS, using the form provided by the Department by January thirty first following the end of a state fiscal year, for use in the annual statistical report. O.A.C. 5122:1-3-01(D)(7).

Withholding Funds

OhioMHAS may withhold all or part of the state and federal funds allocated or granted by the Department to a Board for any of the following reasons: (i) failure to comply with Chapters 340 or 5119 of the Revised Code; (ii) Board denies available service on the basis of race, color, religion, creed, sex, age, national origin, disability, or developmental disability; or (iii) failure of the Board to comply with rules adopted by OhioMHAS. O.R.C. 5119.25.

The Director must withhold funds from a Board if the Board's use of state and federal funds fails to comply with the approved budget, as it may be amended with the approval of the Department. O.R.C. 5119.25. The Director is prohibited from withholding funds for failure to comply with an approved budget without prior notification to and consultation with the Board and the appropriate board(s) of county commissioners. O.A.C. 5122:3-1-01(D)(4).

The Director also must withhold all or part of the funds allocated to a Board if it disapproves all or part of a Board's plan, budget, or statement of services. O.R.C. 5119.25. Prior to a final decision to disapprove a plan, budget, or statement of services, or to withhold funds from a Board, a representative of OhioMHAS must meet with the Board and discuss the reason for the action the Department proposes to take and any corrective action that should be taken to make the plan, budget, or statement of services acceptable to the Department. In addition, the Department must offer technical assistance to the Board to assist it to make the plan, budget, or statement of services acceptable. The department must give the board a reasonable time in which to revise the plan, budget, or statement of services. The Board thereafter must submit a revised plan, budget, or statement of services, or a new plan, budget, or statement of services. O.R.C. 5119.22(G)

Before OhioMHAS withholds funds for any reason it must comply with the process and other requirements described in O.R.C.5119.25 and O.A.C. 5122:1-3-02(B). The Director may appoint a mentor as an alternative to withholding funds in accordance with O.R.C. 5119.25(C).

County Commissioner Funding

Per O.R.C. 340.07, the county commissioners in a Board's service district, upon receipt from the Board of a resolution so requesting, may appropriate money to such Board for the operation, lease, acquisition, construction, renovation, and maintenance of addiction or mental health services providers and facilities in accordance with the comprehensive community mental health and addiction services budget approved by OhioMHAS pursuant to O.R.C. 5119.22.

Donations

O.R.C. 340.03 (C) authorizes Boards to receive gifts, grants, devises, bequests of money, and property for the benefit of the purposes for which the Boards were established. Money received in such a manner, including accrued interest, must be deposited in the treasury of the county, the treasurer of which is the custodian of the Board's funds. Such grants, devises, and bequests may be used for any purpose within the authority of the Board and the specifications of the donor or grantor.

Recruitment of Financial Support

Boards are required to recruit and promote local financial support for addiction and mental health services from private and public sources. O.R.C. 340.03(A)(7).

Levies

A joint-county Board is considered to be a "subdivision" and a "taxing authority" pursuant to O.R.C. Chapter 5705 and as such it may place on the ballot the question of levying a tax in excess of the ten (10) mill limitation pursuant to 5705.19(A) for the current expenses of the Board, or division (F) for the construction or acquisition of any specific permanent improvement or class of improvements. In addition, either a joint-county ADAMH Board, or a board of county commissioners, may seek a tax levy under O.R.C. 5705.191 to supplement the general fund for the purpose of making appropriations for human or social services.

While single-county Boards are without statutory authority to levy funds directly, they may, nonetheless, obtain financial relief through their respective boards of county commissioners. O.R.C. 5705.221 permits boards of county commissioners to seek additional special levies for alcohol, drug addiction, and mental health services and facilities. That section provides that any time a board of county commissioners, by a majority of the full membership, determines that tax revenues obtained within ten (10) mill limitations are insufficient to provide for necessary alcohol, drug addiction and mental health services and facilities, the Board may declare it necessary to levy a tax in excess of the limitation for either the single-county ADAMH district or the county's contribution to the joint-county ADAMH Board district of which the county is a part. The purpose of this levy must be limited to the operation of alcohol, drug addiction and mental health programs and/or the acquisition, construction, renovation, financing, maintenance and operation of alcohol, drug addiction and mental health facilities.

Resolutions passed for such purposes must conform to O.R.C. 5705.19 and must be certified and submitted in accordance with O.R.C. 5705.25.

The joint-county Board or the board of county commissioners, as taxing authorities for the district, may, after approval of the levy and before the first collection of the tax may be made, issue anticipation notes in accordance with O.R.C. 5705.191 or O.R.C. 5705.193.

Anticipation notes issued pursuant to these sections must mature serially, and in substantially equal amounts over the life of the levy. If such notes are issued, the amount necessary to pay the

principal and interest on the notes each year shall be deemed appropriated, and additional expenditures from the proceeds of such levy shall be limited to the balance in excess of such amount.

Borrowing in anticipation of levy proceeds for operational purposes prior to the first collection of the tax, pursuant to Revised Code Section 5705.191, is limited to an amount not to exceed fifty percent (50%) of the levy. Borrowing prior to the first collection of the tax for capital improvements, in accordance with O.R.C. 5705.193, is limited to an amount not to exceed seventy-five percent (75%) of the estimated proceeds of the levy.

Levy Campaigns

Although Ohio law has a general prohibition against political subdivisions using public funds to communicate or distribute information that supports the passage of a levy, ADAMH, CMH, ADAS Boards are specifically excepted from this prohibition in O.R.C. 9.03 as a result of a Board's duty under ORC 340.03(A)(7) to "recruit and promote local financial support...from private and public sources...". Two attorney general opinions have held that this language permits Boards "to expend public funds to promote the approval by the electorate of a tax levy for mental health programs or alcohol and drug addiction programs, provided that the board has public funds available that may lawfully be expended for that purpose." 1979 Op. Att'y Gen. No. 79-022; 1999 Op. Att'y Gen No. 99-030.

It is important to keep in mind the cautionary note contained in AG opinion 99-030 which states that "It is important to note that, as with any expenditure of public funds, the board is bound by the requirement that it exercise its discretion in a reasonable manner and is subject to judicial review for an abuse of discretion."

Boards must ensure that the name of the Board appears in all levy campaign materials issued by the Board and also that the name of the Board is stated in any publication, communication, telephone call, radio or television ad promoting its levy. *Note: Levy Political Action Committees must do the same if they issue such materials, have more than 10 members and spend more than a specified amount on the materials.* O.R.C. 3517.20. Certain printed matter and other kinds of printed communications such as campaign buttons, balloons, pencils, or similar items, the size or nature of which makes it unreasonable to add an identification or disclaimer, are exempt from these requirements.

Indigent Driver Alcohol Treatment Funds

As previously addressed, ADAMH and ADAS Boards are required to administer the indigent drivers' alcohol treatment program of courts located in their service districts in accordance with the requirements of O.R.C. 4511.191. Those Boards must receive a reasonable amount not to exceed five percent of the funds credited to the IDAT fund to cover the costs it incurs in administering IDAT programs (O.R.C. § 4511.191(H)(3)).

Inpatient Care Fines and Court Costs

A court may order that any fines or court costs collected by the court from defendants who have received inpatient care from a community addiction services provider be paid, for the benefit of the program, to the ADAMH or ADAS Board in the service district in which the services provider is located or to OhioMHAS. O.R.C. 2935.33.

Community Construction Programs

Pursuant to O.R.C. 5119.42(B), Boards may apply to the Director of OhioMHAS for state reimbursement of, or state grants for, community construction programs, including residential housing for severely mentally disabled persons and persons with substance use disorders.

The Director may also approve applications for state reimbursement of, or state grants for, community construction programs by other governmental entities or by private nonprofit organizations after the application has been reviewed and recommended for approval by the Board for the district from which the application came, and the application is determined to be consistent with the community addiction and mental health services plan, the budget and the statement of services submitted by that Board.

FISCAL AFFAIRS

Board Auditor and Fiscal Officer

The county auditor in a Board's service district is the auditor and fiscal officer of a Board. In joint-county Board districts, the auditor of the county, the treasurer of which has been designated in the agreement between the counties of the district as custodian of the community addiction and mental health services funds, serves as the auditor and fiscal officer of the Board.

State funds allocated for the support of a service district must be paid to the appropriate county treasurer or, in a joint-county district, to the treasurer of that county designated in the agreement as custodian of the community addiction and mental health services funds and authorized to make payments from the funds on order of the county auditor and on recommendation of a governing board, or the Executive Director of the Board when authorized by the governing board. The auditor must submit to the Board a detailed monthly statement of all receipts, disbursements, and ending balances for the community addiction and mental health services funds. O.R.C. 340.10.

Fiscal Year

Other than for school districts, the fiscal year of all political subdivisions of the state, including ADAMH, CMH, and ADAS Boards, commences at the opening of the first day of January and ends at the closing of the following thirty-first of December. O.R.C. 9.34. However, subdivisions may use a different fiscal year or other fiscal period for one or more of its funds, including when that fiscal year or period is the same as the fiscal year of an entity providing money for the fund or the fiscal period of a capital project. Use of a different fiscal year or period shall be consistent with generally accepted accounting principles and shall be approved by the fiscal officer of the subdivision and by the Auditor of State. If a subdivision uses a different fiscal year or period, the Auditor of State may require the subdivision to continue to maintain financial reports or statements on the basis of the state fiscal year.

All laws applicable to the levying of taxes, the appropriation or expenditure of revenues and the making of financial reports for a fiscal year, refer and apply to the calendar year. It is essential that the Board and its governing board members and employees keep this in mind with respect to all activities related to the county offices and the budget and expenditure system operated through the county auditor, county treasurer and budget commission. This area can be particularly confusing in that reports to OhioMHAS must be prepared on the basis of the state fiscal year, running from the first of July to the following June 30th, and those reports often reflect federal funding running from the first of October to the following September 30th.

Budget and Expenditure Process

As public agencies operating through the fiscal system maintained by the county auditor and county treasurer, ADAMH, CMH, and ADAS Boards are subject to the budgetary and expenditure requirements and controls set forth in O.R.C. Chapter 5705. Single-county Boards differ markedly from joint-county Boards in this area, as joint-county districts are "subdivisions" within the scope of O.R.C. Chapter 5705, whereas single-county districts are merely divisions of the county government for such purposes. O.R.C. 5705.01. The difference is significant and will be discussed in detail throughout this section.

Budget

O.R.C. 5705.28 requires every taxing authority (the board of county commissioners or a joint-county ADAMH Board) in the state to adopt a tax budget by July 15 of each year for the ensuing fiscal year, which will extend from the following January 1 to December 31. This tax budget is formulated for the joint purposes of: (1) furnishing information to the county budget commission in adjusting tax levies to conform to the limitations of law, and (2) fixing the limitations of appropriations and expenditures by the district during the ensuing fiscal year.

A joint-county Board, as the taxing authority of a subdivision, is responsible for the preparation of a tax budget. A single-county Board is not a taxing authority and is not authorized or required to prepare a budget. It must instead submit an estimate of contemplated revenues and expenditures for the ensuing fiscal year to the board of county commissioners, as taxing authority for the county. Similarly, a joint-county Board must, if it wishes to receive an appropriation from a member county in the district, submit such an estimate of contemplated revenues and expenditures to the board of county commissioners of each such county.

The estimate of contemplated revenues and expenditures must be submitted in the form specified by the Auditor of State. It is due before the first day of June of each year. The estimate of revenues should include: expected state and federal funding, fees paid into the Board, donations and other revenues received under color of office.

The tax budget, as completed by the taxing authority, must include the following information as to necessary expenditures and sources of revenue:

- (1) Necessary current operating expenses, classified as to personal services and other expenses, indicating the fund from which such expenditures are to be made [this may include an undesignated contingent expense not to exceed three (3) percent of total appropriations for current expense];
- (2) Necessary expenditures for permanent improvements, exclusive of any expense to be paid from bond issue, classified as to the improvements contemplated and the fund from which the expenditure is to be made;
- (3) Necessary amounts for the payment of final judgments;
- (4) Necessary expenditures for a purpose for which a special levy is authorized, and the fund from which such expenditures are to be made;
- (5) Comparative statements, so far as possible in parallel columns of corresponding items of expenditures, for the current and two (2) preceding years;
- (6) Estimated receipts from sources other than the general property tax during the ensuing fiscal year, including estimated unencumbered balances at the end of the current year

and the funds to which such estimated receipts are credited;

- (7) The amount each fund requires from the general property tax, which shall be the difference between the contemplated expenditures and estimated receipts;
- (8) Comparative statements, as far as possible, in parallel columns of taxes and other revenues for the current fiscal year and two (2) preceding fiscal years;
- (9) The amount required for debt charges;
- (10) Estimated receipts from sources other than the tax levy for payment of debt charges;
- (11) The net amount for which a tax levy shall be made for payment of such charges, and the portion of the levy which will be within and outside the ten (10) mill limitation; and
- (12) An estimate of amounts from taxes authorized to be levied in excess of ten (10) mill limitations, the fund to which such amounts will be credited, and the sections of the Ohio Revised Code under which such tax is exempt from the limitations on the tax rate.

In addition to these items, the budget must also include any other information prescribed by the Auditor of State.

The tax budget for the next fiscal year must be adopted by July 15 and submitted to the county auditor on or before July 20, unless an extension is granted by the commissioner of tax equalization. Two (2) copies of the proposed budget must be filed with the fiscal officer of the subdivision not less than ten (10) days before its adoption. At least one (1) public hearing must be held on the budget, with at least one (1) publication in the official publication of the subdivision of a newspaper of general circulation in the subdivision not less than ten (10) days prior to the date of the hearing. *O.R.C. 5705.30.*

The county budget commission is responsible for adjusting the tax levies to conform to the limitations of law and certifying to the subdivisions the amounts available for appropriation and expenditure in the ensuing fiscal year. Pursuant to *O.R.C. 5705.27*, the budget commission consists of the county auditor, the county treasurer, and the county prosecutor. Two elected representatives may be added by vote of the people.

In the case of the single-county Board, or requests of a joint-county Board for appropriations from a county, the proposed funds for ADAMH/CMH/ADAS Boards are treated somewhat indirectly, as part of the tax budget of the county commissioners, and are subject only to the single-county budget commission. The tax budget of the joint-county Board is, however, subject to concerted action of the budget commissioners of each county within which the joint-county district is located, either as provided in *O.R.C. 5705.48* for joint sessions, or by other concerted action.

The budget commission, upon receipt of the annual tax budgets of all taxing authorities within the county, is to ascertain the total amount to be raised in the county for the purposes of each subdivision and taxing unit. After ascertaining, as provided in *O.R.C. 5705.31*, that certain tax levies are properly authorized and approving them, the budget commission is required to adjust the estimated amounts required from the general property tax levies within the limits of *O.R.C. 5705.01 to 5705.47*, inclusive. The commission is authorized to adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made from each fund by a subdivision.

It is important to note that the budget commission is required by Sections 5705.31, and 5705.32, Revised Code, to reduce any levy, voted or unvoted, the need for which is not reflected in the tax budget of the subdivision. This provision effectively prevents a subdivision from accumulating unused funds over a period of years for subsequent expenditure, as the tax levy will be reduced to reflect available but unused funds.

A limited exception to this has been recognized by the Attorney General, in 1978 O.A.G. 78-003, which allows a Board to budget funds in the current fiscal year for accumulation and expenditure in a subsequent fiscal year, provided that it can show a need to accumulate funds for a specific program requiring matching funds in the subsequent year.

After the budget commission has completed its work, it will certify to the taxing authority of each subdivision the action it has taken, including the rate of tax to be levied. The taxing authority must certify its authorization of the tax levies to the county auditor by October 1, unless a later date is approved by the commissioner of tax equalization. If an additional tax is subsequently approved by the electorate to be placed on the tax list of the current year, it is to be certified by the Board of elections to the taxing authority, which is to make the levy and certify it to the county auditor, who is to extend it to the tax list for collection.

The certification of the action of the budget commission to the taxing authority must list the various funds of the subdivision, and set forth for each fund the estimated unencumbered balances and receipts, any tax to be levied for such fund and the estimated revenue to be derived, the rate of the levy, the portions within and outside the ten (10) mill limitation, and the appropriations which may be made from each fund. A summary, entitled the "official certificate of estimated resources" must be attached, setting forth the estimated resources of each fund. The action of the budget commission may be appealed by the subdivision within thirty (30) days after receipt of official notice, as provided in O.R.C. 5705.37.

Each taxing unit must, before the end of the year, amend its tax budget so as to bring the total contemplated expenditures from each fund within the total certified in the official certificate of estimated resources from the budget commission. On or about the first day of the fiscal year, the county auditor, as fiscal officer of the district, must certify to the budget commission the total amount from all sources available for expenditure from each fund set up in the tax budget, with unencumbered balances from the preceding year. O.R.C. 5705.36. On the basis of this information, the budget commission issues an "amended official certificate of estimated resources," which serves as the basis for the annual appropriation resolution.

Annual Appropriation Resolution

At the end of the fiscal year, all unencumbered funds remaining in an appropriation revert to the fund from which they were appropriated and are subject to future appropriations. O.R.C. 5705.40. Until a new annual or temporary appropriation measure is adopted, no expenditures may be made by the Board other than of properly unencumbered funds for commitments entered into in the preceding fiscal year. For this reason, it is necessary that the taxing authority, either the joint-county ADAMH Board or the board of county commissioners, adopt an appropriation resolution on or about the first day of the fiscal year.

The adoption of the annual appropriation resolution may be delayed, if necessary, until April 1. O.R.C. 5705.38. If this is done, however, it is necessary to adopt a temporary appropriation resolution to authorize expenditures from the first of the fiscal year until such time as the annual appropriation resolution is adopted. If such a temporary resolution is adopted and an annual resolution is not adopted by April 1, no expenditures of any kind can be made or lawful obligations incurred after April 1 until the annual resolution is adopted.

Appropriation measures must separately set forth the amounts appropriated for each office, department and division, and, within each, the amount appropriated for personal services. Appropriations may be made from a fund only for such purposes for which the fund was established, and must, of course, be within the totals listed as available for expenditure therefrom. O.R.C. 5705.39.

Supplemental appropriations may be made, provided that all provisions of law for the original appropriation are followed, and that no appropriation item may be reduced below the amount of unliquidated and outstanding obligations against the appropriation. If additional revenue for the current fiscal year is received and is not included in an official certificate of estimated resources or an amendment thereto, or if actual balances and receipts in a fund exceed the certified estimate, then the budget commission, upon certification by the fiscal officer of the amount of said excess, shall issue an amended certificate, which may be the basis for additional appropriations by the taxing authority.

Expenditure of Funds

After the tax budget and appropriation procedures are completed, funds are available for expenditure. The means by which such expenditures are made and restrictions on such expenditures are set forth in O.R.C. 5705.41.

Pursuant to O.R.C. 340.10 and O.R.C. 5705.41, expenditures of money of a Board are on warrant of the county auditor, upon recommendation of the Board (or the Executive Director when authorized by the Board). No contract shall be made or expenditure ordered by a subdivision, including ADAMH/CMH/ADAS Boards, unless there is attached a certificate of the fiscal officer of the subdivision stating that the amount required to meet the contract has been lawfully appropriated and is in the treasury or in the process of collection to the credit of the appropriate fund, free from encumbrances. If a contract is a continuing contract to be performed in whole or in part in an ensuing fiscal year, such certification is necessary only for the amount required for the current fiscal year.

Where a contract is entered into on a per unit basis, the Executive Director is to certify to the fiscal officer an estimate of the total amount to come due on the contract, and a certification by the fiscal officer as to the availability of funds to cover this estimate or so much of this estimate as will come due in the current fiscal year will satisfy the certification requirements. O.R.C. 5705.41.

Any contract entered into without such a certificate is void, and no payment may be made on the contract. However, if the fiscal officer prepares a certificate stating that at the time of the execution of the contract and at the time the certificate is executed, a sufficient sum appropriated for the purpose of the contract is in the treasury or in the process of collection to the credit of the appropriate fund and unencumbered, the Board may authorize the issuance of a warrant in payment of the amounts due upon the contract. However, the resolution authorizing such issuance must be passed within thirty (30) days of the receipt of the certificate, except where the amount involved is less than three thousand dollars (\$3,000.00). In the latter case, the auditor may authorize payment without affirmation, providing the expenditure is otherwise valid.

O.R.C. 5705.41 (D) also authorizes the fiscal officer to issue "blanket certificates." Where such a certificate has been issued, purchases may be made, orders for payment issued, and obligations incurred, provided that the aggregate total of such sums, entered into for the specified purpose the indicated fund, does not exceed the sum certified by resolution adopted by the Board. An itemized statement of obligations incurred and payments made must be presented to the fiscal officer before another certificate may be issued. Only one (1) blanket certificate may be outstanding at a given time in a single line item.

A Board may also make expenditures and contracts from a specific line-item appropriation account in a specified fund upon certification of the fiscal officer for most professional services, fuel, food items and other specific recurring and reasonably predictable operating expenses. This certification is not to extend beyond the current fiscal year. More than one “super blanket” certificate may be outstanding at a particular time for any line item appropriation.

Borrowing Money

Neither joint-county, nor single-county Boards are "subdivisions" within the meaning of Ohio's Uniform Bond Act (O.R.C. Chapter 133) and as a result, must secure the passage of a levy in order to directly borrow money, with very few exceptions.

Establishment of Reserve Balance Account and/or Capital Improvement Account

Upon the passage of a resolution by a Board's governing Board, the county auditor must establish for the district either a capital improvements account or a reserve balance account, or both, as set forth in the Board's resolution. O.R.C. 5705.221(C).

The capital improvements account is a contingency fund or a "rainy day" fund for the acquisition, replacement, renovation or construction of facilities and movable and fixed equipment. The board shall identify all capital holdings in its inventory and agree upon a replacement cost. Funds not needed to pay for current expenses may be annually appropriated to this account. However, the maximum amount in the capital improvements account cannot exceed twenty-five percent (25%) of the replacement value of all capital facilities and equipment currently used by the Board for programs and services. Any unspent dollars in the account should be carried over to the next year to the maximum twenty-five percent (25%) limitation. Other funds which are available for current capital expenses from federal, state or local sources may also be appropriated to this account.

The reserve balance account shall contain funds which are not needed for current operating expenses and are not deposited in the capital improvements account, but instead will be needed to pay for operating expenses in the future. Consequently, these funds constitute excess revenue of the Board not needed for current operations. Funds from either account shall be appropriated upon the Board's request. This appropriation is an optional management tool available to the Board.

Deposit and Investment of Public Funds

Deposit and investment of public funds belonging to the Board are subject to the provisions of the Uniform Depository Act, O.R.C. Chapter 135. As a result, the responsibility for the deposit and investment of such funds rests with the county treasurer and the board of county commissioners (in a joint district, the board of county commissioners of the county in which the county treasurer serves as treasurer of the district). The Boards, whether single-county or joint-county, are totally without authority to maintain any deposits of public funds or to invest any public monies which come under their control.

Under O.R.C. 135.351, interest on money of a Board which is in the county treasury must be paid into the general fund of the county.

Annual Financial Report

Pursuant to O.R.C. 117.38, multi-county ADAMH Boards must submit an annual financial report to the Auditor of State. O.A.C. 117-1-03(D). Prescribed forms for presenting financial statements using the AOS Regulatory Cash Basis are available from the Auditor of State.

The Boards also have the option of filing financial statements using an Other Comprehensive Basis of Accounting GAAP look-a-like cash or modified cash basis (OCBOA 34) or even on a GAAP basis. Please see the Auditor of State's website for further information: <http://www.ohioauditor.gov/references/shells.html>. A financial report given to the Audit Section during the audit process does not satisfy the requirement for submission of the annual financial report. Reports submitted to the Auditor of State to satisfy the statutory filing requirement are not required to be audited prior to their submission. These annual reports should be submitted to the Auditor of State within 60 days of year end through the AOS' Hinkle Annual Financial Data Reporting System (Hinkle System – formerly known as AFDRS).

Disbursements over \$25,000

Governmental entities are prohibited from disbursing money totaling twenty-five thousand dollars or more to any person for the provision of services that are for the primary benefit of individuals or the public and not for the primary benefit of a governmental entity or the employees of a governmental entity, unless they first enter into a signed written contract with the person that contains all of the requirements and conditions set forth in O.R.C sections 9.23 to 9.236.

If the disbursement of money occurs over the course of a Board's fiscal year, rather than in a lump sum, the Board must enter into the written contract with the person at the point during the Board's fiscal year that at least seventy-five thousand dollars has been disbursed by the Board to the person. Thereafter, the Board must enter into a written contract with the person at the beginning of the Board's fiscal year, if, during the immediately preceding fiscal year, the Board disbursed an aggregate amount totaling at least seventy-five thousand dollars to that person. O.R.C. 9.231

PROPERTY

Gifts

O.R.C. 340.03 (C) authorizes Boards to receive property for the benefit of the purposes for which the Boards were established. Such property may be used for any purpose within the authority of the Board and the specifications of the donor or grantor.

Real Property

By statute, Boards are empowered to purchase real property. Pursuant to O.R.C. 340.031 (B), Boards may acquire, convey, lease or enter into a contract to purchase, lease or sell property for community addiction and mental health services and related purposes. Incident to this authority, Boards may also enter into loan agreements, including mortgages, for the acquisition of such property. Such agreements may, however, require approval of a tax levy to repay the debt. Article XII, Section 11, Ohio Constitution.

Personal Property

Boards may purchase and hold title to personal property necessary for the operation of the Board, such as office supplies, equipment, furniture and motor vehicles. In addition, the Board would hold title to property purchased for the use of contract agencies or the cost of which is supported with public funds through the Board.

Inventory

It is essential for both auditing and management purposes that a perpetual inventory be maintained of personal property titled in the name of the Board. All property with a cost in excess

of a threshold figure selected by the Board and a useful life in excess of one (1) year should be listed. Inventory records should include for each item: the date of acquisition; cost; the manufacturer's serial number, if any; an identifying tag number attached to the property and assigned serially to the equipment; the individual, division, or office to which the equipment is assigned; the location of the equipment; date of Board action for disposal of property; date of disposal; the amount, if any, realized on disposal; and the fund to which such proceeds were credited. In addition, an annual inventory must be filed with the board(s) of county commissioners and county auditor by the second Monday of January in each year. O.R.C. 305.18.

Insurance

Boards may expend public funds for the purchase of insurance to insure the Board against loss due to physical damage or destruction of Board-owned property. Since insurance is a specialized service, the Board should not need to obtain insurance through the competitive bidding process.

PURCHASING REQUIREMENTS (OTHER THAN BEHAVIORAL HEALTH SERVICES)

Bidding Procedures

Contracts entered into by Boards pursuant to O.R.C. 340.03(A)(8)(a) with facilities for the operation of facility services and with community addiction and mental health services providers are exempt from the competitive bidding requirements of O.R.C. 307.86.

Boards should consult with their legal counsel regarding the applicability of competitive bidding requirements to Board purchases.

Prevailing Wage

Boards, as public authorities, must comply with the prevailing wage requirements of Chapter 4115 in regards to any construction, reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement if the threshold amounts set forth in statute are reached for a given project. O.R.C. 4115.04.

Electronic Data Processing Services

O.R.C. 9.35 specifies the procedures by which a "public official" may contract for and engage the services of a financial institution, or other person engaged in the business or capable of rendering electronic data processing or computer services, to perform the mechanical, clerical, or record-keeping services necessary in the performance of his or her duties. Such services may include, but are not limited to, the preparation of payroll and other records, the preparation, signing, and issuance of checks, the preparation of reports and accounts, and the performance of all similar duties. "Public official", as used in this section, includes an appointed officer, employee or agent of a public body who is permitted or required to perform such duties. It is clear that employees of ADAMH, CMH and ADAS Boards may fall into this classification.

A public official is authorized to enter into a contract with an institution rendering electronic data processing services to perform such duties. This may be done if:

- (1) Any surety bond required for such position covers any loss which might occur under such contract;
- (2) The public body with jurisdiction over the public official property authorizes such contract by resolution;

- (3) The provisions of the contract are consistent with the uniform system of accounting and reporting prescribed by the Auditor of State; and
- (4) Assurances satisfactory to the Auditor of State are furnished by the institution, or other person engaged in the business or capable of rendering electronic data processing or computer services.

Also, the books and records of the public official in the possession of the person performing such service, shall be subject to audit by the Auditor of State to the same extent as if such services were being performed by the public official himself.

Such contracts are, of course, subject to the general provisions of contracts discussed earlier in the text as well.

Set Aside Programs

Pursuant to O.R.C. 340.13, Boards must set aside a portion of their contracts for the purchase of equipment, materials, supplies or services (other than mental health and addiction services) for bidding by minority business enterprises and a portion of construction contracts for bidding by EDGE business enterprises.

Minority Business Enterprise means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are residents of this state and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians. Minority Business Enterprises must be certified by the director of administrative services.

EDGE business enterprise means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the encouraging diversity, growth, and equity program by the director of administrative services.

The EEO coordinator of the department of administrative services maintains a list of certified minority business enterprises and EDGE enterprises.

For contracts for the purchase of equipment, materials, supplies or services (other than contracts with mental health and addiction services providers) Boards must select a number of contracts with an aggregate value of approximately fifteen per cent of the total estimated value of contracts to be awarded in the current fiscal year for bidding by minority business enterprises only. If a contract is set aside and no bid is submitted by a minority business enterprise, the contract should be awarded according to normal bidding procedures. The Board must from time to time set aside such additional contracts as are necessary to replace those contracts previously set aside on which no minority business enterprise had bid.

Boards must strive to attain a yearly contract dollar procurement goal, the aggregate value of which equals approximately five per cent of the aggregate value of construction contracts for the current fiscal year for EDGE business enterprises only. If the Board, after making a good faith effort, is unable to comply with the goal of procurement for contracting with EDGE business enterprises, the Board may apply in writing, on a form prescribed by the Department of Administrative Services, to the Director of OhioMHAS for a waiver or modification of the goal.

Within ninety (90) days after the beginning of each fiscal year, each Board must file a report with OhioMHAS that shows for that fiscal year the name of each minority business enterprise and EDGE business enterprise with which the Board entered into a contract, the value and type of

such contract, the total value of contracts awarded to minority and EDGE business enterprises, the total value of contracts awarded for the purchase of equipment, materials, supplies, or services (other than mental health and addiction services) and the total value of contracts entered into for construction.

Boards should consult with their legal counsel regarding questions or concerns related to set-aside provisions or requirements.

Affirmative Action and Non-Discrimination

O.R.C. 125.111 requires that all contracts entered into by political subdivisions, such as Boards, for any purchase, must contain a provision that prohibits contractors, subcontractors and their employees from discriminating in the hiring and employment of persons for the performance of work under the contract based on the protected categories listed in that section. Additionally, each such contract must contain a provision requiring contractors to file a description of its affirmative action program and a progress report on the program's implementation with the equal employment opportunity office (EOD) of the Department of Administrative Services (DAS) on an annual basis. The DAS Affirmative Action Program Verification webpage provides additional information about these requirements.

APPENDICES

FREQUENTLY ASKED QUESTIONS

GENERAL

1. *Q. What is "commingling of funds"?*
 - A. Commingling of funds is a mixing of different funds in such a manner that they lose their distinct character and become indistinguishable one from the other.
2. *Q. Who maintains ownership and who is accountable for commingled funds?*
 - A. The question of ownership is a legal question which must be settled on a case by case basis. Where public funds and private funds have been commingled, the public officer responsible for the public funds is accountable for the commingled funds.
3. *Q. What factors should be considered in determining whether a specific item should be included in an inventory?*
 - A. The responsible authority should consider both the estimated useful life of the equipment and the cost in determining whether it should be included in the inventory. If the cost is in excess of a reasonable amount adopted by the authority and has a useful life in excess of one year, it should generally be included in the inventory.
4. *Q. What controls should be imposed upon dispensing of equipment owned by a Board?*
 - A. A perpetual inventory system, as described in the text, should be established. Whenever property is assigned to anyone, the name of the individual responsible for the equipment, the office, or division with which he/she is connected, and the location of the equipment should be noted on the inventory record. Any change in these items should be reported to the individual responsible for maintenance of the inventory.
5. *Q. How should inventory items be labeled?*
 - A. An identifying number should be affixed to each inventory item. The numbers should also be listed with the item in the inventory records. All numbers should be sequential.
6. *Q. How is the phase-out procedure determined when a contract provider terminates its relationship with a Board?*
 - A. The procedure will be determined by the terms of the contract between the parties. Careful consideration should thus be given to the contracting process, particularly with regard to property purchased by the Board, or property in which the cost was supported with public funds.
7. *Q. What documentation of expenses is required of a Board's governing board members and employees?*
 - A. To receive reimbursements for expenses incurred on business of the Board, governing board members and employees should present official receipts to support the request. The Board should have a policy indicating what is required for reimbursement and under what circumstances.

BOARD POWERS AND DUTIES

1. *Q. May a Board purchase liability insurance for the Board as an entity or for Board members as individuals?*
 - A. O.R.C. 340.11 authorizes the Board to procure a policy or policies of insurance to insure Board members and employees against liability incurred in the performance of their official duties. In addition, there is implied authority for the Board to purchase liability insurance for the Board in any areas in which it is potentially liable as an entity.

2. *Q. May an ADAMH/CMH/ADAS Board indemnify a governing board member or employee if liability insurance is unavailable or insufficient to cover the amount of a claim?*
 - A. O.R.C. 340.11 authorizes the Board to indemnify any governing board member or employee for any action or inaction in that individual's capacity as a governing board member or employee who:
 - (i) acted in good faith and in a manner which the individual believed was in, or was not opposed to, the best interest of the Board; or
 - (ii) in a criminal action where the Board employee had no reason to believe his/her conduct was unlawful.

Boards may indemnify governing board members or employees against any expenses, including attorney fees, that are actually and reasonably incurred in his/her successful defense of a suit or other legal proceeding.

3. *Q. Should governing board members be bonded?*
 - A. It is suggested that all governing board members be bonded in such amount as to cover any loss which might reasonably be expected to occur as a result of fraudulent or dishonest acts, failure to faithfully perform the duties of office, or failure to account for all monies received in the performance of official duties.

4. *Q. What are legitimate governing board member expenses, for purposes of reimbursement by the district?*
 - A. Governing board members may be reimbursed for actual and necessary expenses incurred in the performance of official duties. Although some reasonable discretion is necessary here, Board members should, whenever possible, have receipts to verify the expenditures made. Additionally, it must be shown that the expenses were, in fact, necessary and essential to business of the district and not merely convenient for the individual. For example, expenditures for alcoholic beverages and gratuities (unless a mandatory service charge) are not necessary for the business of the district and are, therefore, not reimbursable expenses. In addition, reference should be made to rules of OhioMHAS on this subject. Additional guidance can be found in Auditor of State Technical Bulletins 2003-05 and 2004-02.

5. *Q. What is appropriate wording for the oath of office?*
 - A. The oath may be worded as follows: "I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Ohio and will faithfully discharge the duties of my office."

6. *Q. Who may administer the oath of office?*
- A. The oath of office may be administered by a notary public, a judge, any elected official that serves within the Board's service district, or by any member of the General Assembly throughout the state. O.R.C. 3.24.
7. *Q. In carrying out official actions of a Board's governing board, what constitutes a quorum and a majority vote?*
- A. A quorum for formal action consists of a majority of the governing board, provided that all members have been given notice of the meeting. Formal action then requires the assent of a majority of the quorum. Exception: Removal of the Executive Director requires a majority vote of the full membership.
8. *Q. Should all members of a governing board be given a copy of O.R.C. Chapter 102 and Chapter 2921 regarding Ohio's ethics laws?*
- A. Yes. Those items must be distributed to governing board members and employees within fifteen (15) days of their appointment or employment. Their receipt must be acknowledged in writing. O.R.C. 102.09.
9. *Q. Must vouchers be approved for payment prior to payment, or may they be reviewed and approved afterwards?*
- A. O.R.C. 340.10 expressly provides that payment of vouchers is to be on recommendation of the governing board or the Executive Director of the Board when authorized by the Board. There is no authority for payment prior to formal approval.
10. *Q. What are specific procedures for listing of vouchers for Board approval?*
- A. An approved method is set forth under the *Approval of Bills for Payment* heading in the Administration and Finance section.
11. *Q. May the authority to approve vouchers for payment be delegated to the Executive Director of the Board?*
- A. Yes, this is a delegable duty.
12. *Q. If a suit is brought alleging an illegal expenditure of public funds by a Board, against whom is suit brought?*
- A. Such a suit may be brought by the prosecuting attorney, the Attorney General, or a taxpayer. It may be a suit for recovery of funds believed to have been expended without authority of law, or it may seek an injunction restraining a proposed expenditure of funds. Defendants may include the Board as an entity, an individual governing board member, the Executive Director, the fiscal officer and/or potential or actual recipients of funds, as circumstances warrant.
13. *Q. How many days prior to a scheduled meeting should governing board members receive written materials concerning the meeting?*
- A. There is no specific time limit for materials to be submitted to governing board members prior to a meeting unless such a limit is adopted by the governing board in its organizational rules. However, all members must be given prior notice that a meeting is

to be held. In addition, certain requirements are imposed as to public notice of meetings, pursuant to O.R.C. 121.22 (F).

14. *Q. Within how many days following a governing board meeting should minutes be sent to appropriate persons?*
- A. Again, unless otherwise provided in the rules of the Board, there is no requirement that minutes be sent out. The minutes must, however, be promptly recorded and open to public inspection.
16. *Q. What constitutes a full Board term?*
- A. A full Board term is four years, commencing on the first day of July, except for initial appointments. For additional information, see the *Additional Eligibility Requirements of Board Members* heading in the Board Governance section.
17. *Q. Must Boards comply with the "Sunshine Law" and all its provisions?*
- A. Yes. A Board is a "public body" as defined in O.R.C. 121.22 (B)(1), and is subject to the provisions of O.R.C. 121.22, commonly referred to as the "Sunshine Law".
18. *Q. Are there any requirements or regulations requiring governing board members to submit a financial disclosure statement?*
- A. No. The governing board members of ADAMH, CMH and ADAS Boards are not included in the categories of entities that must file financial disclosure statements pursuant to of O.R.C. Chapter 102.
19. *Q. Who is the Board's legal counsel?*
- A. The county prosecutor is required to serve as legal advisor to a single-county Board. He/she is not authorized, however, to serve as legal advisor to a joint-county Board, which may contract with private counsel pursuant to O.R.C. 340.04(A). A single-county Board may only contract for legal services in accordance O.R.C. 305.14.
20. *Q. May the governing board establish an executive committee?*
- A. There is no express authority for the formation of an executive committee of the governing board. Although such authority may be implied from the authority of the Board to prescribe operating procedures, the possibility of inadvertently violating requirements of the "Sunshine Law", O.R.C. 121.22, is so great that creation of an executive committee is not recommended. In any event, the executive committee could not take any formal action on behalf of the Board.
21. *Q. Should the duties and responsibilities for all standing and ad hoc committees be included in the rules and regulations of the Board?*
- A. Yes.
22. *Q. May the Board have a savings or checking account?*
- A. No.
23. *Q. What is the proper procedure when a Board receives a private contribution or donation?*

- A. All monetary contributions to the Board, including accrued interest of money received, must be deposited in the county treasury to the credit of the Board, for expenditure for purposes stated by the donor or grantor. Contributions of real and personal property should be applied as in the gift, grant or devise. If such property is sold, the proceeds of the sale should be deposited in the county treasury for subsequent expenditures.
24. *Q. Is it necessary for the Board to approve staff and governing board members' attendance at out-of-county workshops and meetings?*
- A. Yes. The Board should ensure that some type of control is exercised over out-of-county travel. The governing board should authorize the travel of appropriate individuals and the reimbursement of actual and necessary expenses incurred as part of that travel. This can be accomplished by resolution or through a motion that is captured in meeting minutes. A blanket authorization, with or without set monetary limitations, is acceptable for this purpose, and the governing board need not make such decisions on a case-by-case basis. In addition, the governing board may choose to delegate the responsibility for making such determinations to the Executive Director of the Board. The governing board may choose to define parameters within which such decisions are to be made by the Executive Director.
25. *Q. Is the Board prohibited from granting retroactive pay to employees?*
- A. No. The Attorney General has indicated in 1981 O.A.G. 81-011 that the prohibition upon retroactive compensation in Article II, Section 29, Ohio Constitution, does not apply to units of local government.

EXECUTIVE DIRECTOR

1. *Q. Is an Executive Director a member of the classified civil service?*
 - A. No.
2. *Q. May an Executive Director be held personally liable for actions of Board employees and contract providers?*
 - A. As a public officer, an Executive Director may be held liable for the actions of his/her subordinates, particularly in the area of unlawful expenditure of public money. Although he/she would not normally be answerable for the misconduct of a contract agency or its personnel, such action may involve neglect or misconduct on the part of the Executive Director and his/her subordinates, as well as the contract agency, in which case he/she could be found liable.
3. *Q. May the Board purchase liability insurance for the Executive Director out of public funds?*
 - A. Yes. As an employee of the Board, he/she is eligible for the purchase of insurance against liability arising from the performance of his/her official duties.
4. *Q. Should Executive Directors be bonded?*
 - A. The Executive Director should, for the protection of the district, be bonded for such an amount as to cover any loss which might be expected to occur as a result of fraudulent or dishonest acts, failure to perform faithfully the duties of offices, or failure to account for all monies received in the performance of official duties. The cost of this bond may be paid from public funds.
5. *Q. What methods may be used to evaluate the performance of the Executive Director?*
 - A. Provisions of such review should be formally adopted by the Board and recorded in the journal of proceedings. As each review occurs, it should be noted in the journal of proceedings.
6. *Q. What responsibilities does the Executive Director have concerning the administration of personnel?*
 - A. The governing board and the Executive Director have separate and distinct responsibilities regarding personnel. The governing board is responsible for establishing positions, approving job descriptions and job titles, and approving compensation schedules, including both salary and fringe benefits. The Executive Director, in contrast, is responsible for the employment of specific individuals to fill positions, promoting, disciplining and discharging employees, and determining compensation within the limits of the schedules adopted by the governing board.
7. *Q. Do state statutes require confirmation or ratification by the Board of personnel actions undertaken by the Executive Director?*
 - A. No. This area is within the authority of the Executive Director. However, all such actions should be promptly reported to the governing board and duly noted in the journal of proceedings.

8. *Q. What are the respective roles of the governing board members and the Executive Director in determining the compensation of Board employees?*
- A. The governing board is only responsible for fixing the specific compensation of the Executive Director. For all other positions, the governing board is responsible for the adoption of salary and fringe benefit schedules. The Executive Director is then responsible for fixing the compensation of specific employees within the limits of such schedules.
9. *Q. What official documents may the Executive Director sign on behalf of the governing board?*
- A. The Executive Director may be authorized by resolution to sign documents on behalf of the governing board. It is important to note, however, that this does not include the authority to exercise discretionary powers of the governing board. Thus, where such an exercise of discretion on the part of the governing board is involved, the decision of the board must be reached at a formal meeting, duly noted in the journal of proceedings, and a resolution duly adopted authorizing the Executive Director, on behalf of the board, to sign specific documents to implement the actions of the board.
10. *Q. What consultants may be employed by the Executive Director?*
- A. The Executive Director may employ and remove such consultants as are necessary for the work of the Board, including the services of an accountant. As with other employment positions, the positions should be approved by the governing board, with the specific individuals selected and employed by the Executive Director. If it is deemed necessary to contract with a consultant on an independent contractor basis, the contract should be between the individual and the board, in compliance with the section as to contracts generally. It should be noted that the Executive Director may employ and remove consultants in the classified civil service without board approval.
11. *Q. What is the proper procedure for the removal of an Executive Director?*
- A. The governing board may remove an Executive Director only by a majority vote of the full Board membership. The Executive Director may be removed only for cause, upon written charges and only after an opportunity has been afforded him/her for a hearing before the board, if such hearing has been requested.

JOURNAL OF PROCEEDINGS (MINUTE BOOK)

1. *Q. What is the suggested format for the journal of proceedings?*
 - A. The Board may choose the medium upon which it keeps such records, as long as it reasonably can be maintained and duplicated during the Board's normal operations. Each entry should state the date, time and location of the meeting and any pertinent details of Board actions.

2. *Q. Must all Board actions be journalized?*
 - A. Yes. As it is often put, "The Board speaks only through its journal." All formal Board actions must be properly recorded to be of effect.

3. *Q. What is meant by "public access" to the journal?*
 - A. The journal of proceedings is a public record for the purposes of O.R.C. 149.43, and as such must be available, at reasonable times, to public inspection. In addition, copies must be made available to the public at cost, upon request.

4. *Q. Who should receive copies of Board minutes?*
 - A. Copies should be provided at cost and within a reasonable time to anyone requesting them.

5. *Q. What are the requirements for the recording of Board and committee meeting minutes?*
 - A. The minutes of all meetings must be promptly recorded. The medium selected for this purpose is up to the Board. Minutes should be attested to and signed by the appropriate officers.

6. *Q. How long must official minutes be retained?*
 - A. The Ohio County Records Manual, prepared by the Ohio Historical Society, recommends permanent retention of the minutes. In any event, destruction of such records require approval of the county records commission and the Auditor of State, as well as sixty (60) days' notice to the archivist of the Ohio Historical Society. The Board must also have available a copy of its current records retention schedule at a location readily available to the public.

CONTRACTS

1. *Q. What are the recommended minimal provisions of a contract between a Board and a contract provider?*
 - A. This is a complex topic, and reference should be made to the contracts portion of this Handbook, as well as requirements of OhioMHAS and legal counsel should be consulted. However, provisions concerning the following topics are recommended: (1) Modification and Cancellation; (2) Audit Provisions; (3) Property; (4) Cooperative Purchase of Fringe Benefits; (5) Civil Rights Provisions; and (6) Methods of Payment.

2. *Q. Must such contracts be certified as to the availability of funds by the county auditor?*
 - A. Yes. This is required by O.R.C. 5705.41 (D). The county auditor must certify that sufficient funds have been lawfully appropriated for the purpose in question, are in the treasury or in the process of collection, and are free from encumbrances.

3. *Q. What formal action is required by a Board for approval of a contract?*
 - A. The Board should adopt a resolution approving the contract in question and designating those representatives of the Board, such as the president and the Executive Director, who are to sign the contract on behalf of the Board.

4. *Q. May a Board contract with a profit-making corporation?*
 - A. Yes. There is no statutory requirement that contracts be restricted to non-profit corporations.

5. *Q. Does HIPAA require a Board to enter into a Business Associate Agreement (BAA) with its contract providers?*
 - A. In most cases – no. A Business Associate is a person or entity who “performs functions or activities on behalf of, or provides certain services to” a covered entity for which access to the covered entity’s PHI is necessary. A Business Associate Agreement (BAA) is not required, and does not make legal sense to enter into, when the other entity is simply performing a function that is typically performed by that type of entity or if the activity is part of treatment, payment, health care operations or is required by law.

Examples: billing management, claims or data processing, utilization review, accounting, legal, data analysis, actuarial, accounting, consulting, data aggregation, management, administrative, medical transcription services, accreditation, financial services, health information organizations, and e-prescribing gateways.

In most instances, Boards are not performing services on behalf of providers for which a BAA is necessary.

The following is from the HHS website in regards to circumstances when a BAA is not required:

Other Situations in Which a Business Associate Contract Is NOT Required:

When a health care provider discloses protected health information to a health plan for payment purposes, or when the health care provider simply accepts a discounted rate to participate in the health plan’s network. A provider that submits a claim to a health plan and a health plan that assesses and pays the claim are each acting on its own behalf

as a covered entity, and not as the “business associate” of the other.

There may be some instances where Boards do actually perform an activity or service on behalf of a provider, such as report creation, data entry/aggregation or another administrative-type service. In those cases, a BAA would need to be entered into between the Board and provider in order for the provider to disclose PHI to the Board to perform those services. The Board would still be considered to be a covered entity under HIPAA in its own role as a health plan but would also be performing the role of a business associate when it performs a function on behalf of the provider.

6. *Q. Must a contract for the provision of mental health and/or addiction services and facilities be only for a one-year period?*
 - A. No. O.R.C. 340.03(A)(8)(a) provide the authority for Boards to enter into contracts with public and private providers without a restriction regarding the duration of the contract. Thus, there is no statutory restriction that the contract be limited to one year.

COUNTY BUDGET COMMISSION

1. *Q. What is the make-up of the county budget commission?*
 - A. The county budget commission consists of the county auditor, the county treasurer and the county prosecutor. Two (2) elected members may be added by vote of the people. *O.R.C. 5705.27.* A joint-county budget commission consists of the members of the budget commissioners of all counties within the territory over which the joint-county district is located.

2. *Q. What are the general responsibilities of the county budget commission with respect to a Board?*
 - A. The responsibilities of the county budget commission with respect to Boards do not differ from the county budget commission's responsibilities to other governmental agencies within the county. In summary, these include:
 - (1) Adjusting the estimated amounts required from the general property tax for each fund, so as to bring the tax levies within the limitations of *O.R.C. 5705.01 to 5705.47;*
 - (2) Revising and adjusting the estimate of balances and receipts from all sources for each fund, determining the total appropriations that may be therefrom;
 - (3) Reducing any tax levy which is not shown by the tax budget of the subdivision to be clearly required; and
 - (4) Certifying to the taxing authority of the subdivision the action it has taken, including the rate of tax to be levied.

3. *Q. What information must be submitted to the county budget commission?*
 - A. The tax budget filed with the county auditor on or before the twentieth of July will be submitted by him/her to the county budget commission on or before its meeting on the first Monday of August. The commission must also be given "such other information as the commission requests or the tax commissioner prescribes." *O.R.C. 5705.31.*

4. *Q. What additional information may the county budget commission request from a Board?*
 - A. This is a discretionary matter for the county budget commission.

5. *Q. May a Board call a meeting with the county budget commission?*
 - A. *O.R.C. 5705.32(E)(2)* provides that representatives of a subdivision are entitled to appear before the commission to explain their financial needs before the final determination of the amount to be allocated to them from any source. Additional meetings may be requested at other times.

6. *Q. Is the county budget commission authorized to reduce the millage of tax levies approved by the voters?*
 - A. Yes. Approval of a tax levy by the voters merely authorizes the levy of a tax if the taxing budget of the subdivision shows it to be clearly required. If not, the county budget commission is required to reduce the millage to an appropriate level. *O.R.C. 5705.341.*

7. *Q. May the county auditor reduce levy millage other than through the county budget commission?*
- A. If the rate of taxation contains a fraction other than a decimal fraction or a decimal fraction less than one-tenth of a mill, it may be adjusted by the county auditor. If it is less than one-twentieth of a mill, the fraction should be dropped. If it is more than one-twentieth of a mill and less than one-tenth of a mill, the difference between the fraction and one-tenth of a mill shall be added to the rate. Any other restrictions require action of the county budget commission.
8. *Q. Where a joint-county ADAMH Board requests an appropriation from the board of county commissioners, must it submit budgetary information only insofar as it relates to that county, or must it submit information as to the total budget of the district?*
- A. As a district authority requesting an appropriation, the joint-county district, through the Board, must submit an estimate of contemplated revenues and expenditures to the taxing authority (the board of county commissioners) much as if it were a single-county Board. This information must be for the district as a whole, and not merely that portion directly affecting the county in question.
9. *Q. May the county auditor decline to collect fractions of millage approved by the electorate?*
- A. Yes. (See Question 7, above.)
10. *Q. If unanticipated revenues become available during the year which are not reflected in an official certificate of estimated resources, what steps must be taken before these additional funds may be expended?*
- A. As the fiscal officer of the district, the county auditor, must certify the amount of such receipts to the county budget commission, which will then certify an amended official certificate of estimated resources reflecting the additional revenue. The additional revenue must then be appropriated by the taxing authority (a joint-county ADAMH board or the board of county commissioners) before it may be expended.

COUNTY AUDITOR

1. *Q. What is the role of the county auditor with respect to ADAMH, CMH and ADAS Boards?*
 - A. The county auditor serving as fiscal officer for the Board, whether joint-county or single-county, is responsible for the preparation of warrants upon recommendation of the Board and maintenance of the financial records of the Board in accordance with the Uniform System of Accounting prescribed by the Auditor of State.
2. *Q. Is the county auditor's office authorized to make charges against the Board accounts without prior notification and approval by the Board?*
 - A. Yes. He or she may on occasion be required to make such charges. For example, audit costs may be charged in this fashion.
3. *Q. May Boards request a detailed analysis of cash summary totals from the county auditor on a monthly basis?*
 - A. The Board may request such information from the county auditor as it deems necessary. If he or she is unwilling or unable to provide such information, Board employees are entitled to reasonable access to such information in the county auditor's records as they require.
4. *Q. Is the Board required to file a budget with the county auditor for the ensuing fiscal year?*
 - A. Yes. A Board must adopt a tax budget and file it with the county auditor serving as fiscal officer by July 20 for the fiscal year commencing the following January 1. In addition, the annual appropriation measure must be certified by the county auditor before any expenditures may be made. O.R.C. 5205.39.
5. *Q. Must the Board reconcile its accounts on a monthly basis with the county auditor?*
 - A. It is essential that such a reconciliation be conducted on a regular basis. The auditor must submit to the Board a detailed monthly statement of all receipts, disbursements and ending balances. O.R.C. 340.10.
6. *Q. Is the county auditor required to keep accounts that differentiate between local, state and federal funds?*
 - A. The county auditor is required to keep accounts in accordance with the provisions of O.R.C. Chapter 5705 and Bureau Form 4260 - Classification of Receipts and Appropriation of Accounts for Counties, which is published by the Auditor of State. This system of accounting clearly differentiates such funds.
7. *Q. How is interest on county investments to be apportioned to the various districts and subdivisions?*
 - A. Interest on money in the county treasury is to be paid into the county general fund, rather than into the fund to which the principal belongs. O.R.C. 135.351.

LEVIES

1. *Q. Are the county Boards of election required to provide to the Board, upon request, the appropriate statutory authority, required wording, millage, duration, and dates for levy?*
 - A. No. This is the responsibility of the taxing authority (the county commissioners or a joint-county Board) in its preparation of the appropriate resolution.

2. *Q. What levies are permissible for ADAMH, CMH and ADAS Boards?*
 - A. Either a joint-county ADAMH Board or a board of county commissioners may seek a tax levy under O.R.C. 5705.191 to supplement the general fund for the purpose of making appropriations for human or social services. A joint-county Board may also seek a tax levy pursuant to O.R.C. 5705.19(A) for the current expenses of the Board or pursuant to 5705.19(F) for the construction or acquisition of any specific permanent improvement or class of improvements. In addition, a board of county commissioners may seek a tax levy under O.R.C. 5705.221, for either a single-county Board district or the county's contribution to the joint-county Board district of which the county is a part, for the operation of mental health and addiction services programs and the acquisition, construction, renovation, financing, maintenance, and operation of alcohol, drug addiction and mental health facilities.

3. *Q. Are Boards permitted to campaign for their levies?*
 - A. Prior to 1979, it had been assumed that public funds could not be expended to promote a tax levy. This rule was overturned, however, by the Ohio Attorney General in 1979 O.A.G. 79-022 and reaffirmed in 1999 O.A.G. 99-030. That opinion stated in pertinent part, that ADAMH, CMH and ADAS Boards are authorized, pursuant to their authority to “recruit and promote local financial support...from private and public sources...” to expend public funds to promote the approval of their tax levies by the electorate, provided that the Board has public funds available that may be expended for that purpose. O.R.C. 9.03 has since been revised to explicitly exempt Boards from the prohibition on expending public funds to promote a levy.

STATE AUDITING PROCEDURES

1. *Q. Are assistant state auditors required to conduct a post-audit or exit conference upon completion of the audit?*
 - A. The Executive Director and representative of the Board will normally be invited to an exit conference to discuss the results of the audit. This is not required by law and may not occur if the confidentiality of exit conferences has been breached in the past by the subdivision under audit.

2. *Q. May the results of the audit, as revealed in the exit conference, be appealed by the Board?*
 - A. Yes. The Board may, within five (5) working days of the exit conference, submit a letter of rebuttal, which will be carefully considered in the normal review process.

3. *Q. May findings for recovery be paid prior to release of the audit report?*
 - A. Yes. If findings for recovery are paid prior to release of the audit report, the Auditor of State should be notified immediately so that a notation may be inserted in the report to the effect that the amounts in question were repaid while under audit.

4. *Q. May the Board request a special audit of the Board, outside formal examination schedule?*
 - A. Yes. Whether such a request will be granted will depend on audit schedules, available personnel and information submitted by the Board in support of its request.

5. *Q. May the Board request an audit of a contract agency?*
 - A. Yes. Such request will be treated in the same manner as requests for special audits, with the same evaluative criteria in use.

(Note: This should not be confused with audits required by law to be carried out pursuant to O.R.C. 340.03 (A)(6)).

GLOSSARY

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ANNUAL BUDGET - A budget applicable to a single fiscal year.

APPROPRIATION - An authorization granted by a legislative body to make expenditures and to incur obligations for specific purposes. (NOTE: An appropriation is usually limited as to the time when it may be expended.)

APPROPRIATION ACCOUNT - A budgetary account set up to record specific authorizations to spend. The account is credited with original and supplemental appropriations and is charged with expenditures and encumbrances.

APPROPRIATION EXPENDITURE - An expenditure chargeable to an appropriation. (NOTE: Since virtually all expenditures of governmental units are chargeable to appropriations, the term EXPENDITURES by itself is widely and properly used.)

APPROPRIATION LEDGER - A subsidiary ledger containing an account for each appropriation. Each account usually shows the amount originally appropriated and encumbered, transfers to or from the appropriation, amounts charged against the appropriation, the unencumbered balance, and other related information. If allotments are made and a separate ledger is maintained for them, each account in the appropriation ledger usually shows the amount appropriated, transfers to and from the appropriation, the amount allotted and the unallotted balance.

BLANKET CERTIFICATION - The procedure by which a fiscal officer issues a certificate against an appropriation fund for a maximum amount set by the Board for a period not extending beyond the end of the fiscal year, and a purchase order is used to post charges against the appropriation fund without the necessity of issuing a certificate each time an item is needed.

BUDGET - A plan of financial operation embodying an estimate of proposed expenditures for a given period and the proposed means of financing them. Used without any modifier, the term usually indicates a financial plan for a single fiscal year. (NOTE: The term "budget" is used in two senses in practice. Sometimes it designates the financial plan presented to the appropriating body for adoption and sometimes the plan finally approved by that body).

BUDGETARY ACCOUNTS - Those accounts which reflect budgetary operations and conditions, such as estimated revenues, appropriations, and encumbrances, as distinguished from proprietary accounts.

BUDGETARY CONTROL - The control or management of a governmental unit or enterprise in accordance with an approved budget for the purpose of keeping expenditures within the limitations of available appropriations and available revenues.

CASH BASIS - The basis of accounting under which revenues are recorded when received in cash and expenditures are recorded when paid.

DEBT - An obligation resulting from the borrowing of money or from the purchase of goods and services. Debts of governmental units include bonds, notes, and floating debt.

DEBT LIMIT - The maximum amount of gross or net debt which is legally permitted.

DEFICIT - (1) The excess of the liabilities and reserves of a fund over its assets; (2) The excess of expenditures over revenues during an accounting period, or (3) in the case of Enterprise and Internal Service Funds, the excess of expense over income during an accounting period.

DISBURSEMENT - An expenditure of paying out of money from the appropriation account.

DISTRICT - A sub-unit of the government, established to provide services of a specific nature to a limited geographical area; e.g., an ADAMH, CMH, or ADAS Board district.

ENCUMBER - To charge against a specific appropriation item and set aside appropriated funds for the obligation established by purchase order.

ENCUMBRANCES - Obligations in the form of purchase orders, contracts, or salary commitments which are chargeable to an appropriation and for which a part of the appropriation is reserved. They cease to be encumbrances when paid or when the actual liability is set up.

EXPENDITURES - Where the accounts are kept on the cash basis (q.v.), the term designates only actual cash disbursements for these purposes. (NOTE: Encumbrances are not expenditures.)

FIDELITY BOND - A written promise to indemnify against losses from theft, falsification, and misappropriation of public funds by government officers and employees.

FISCAL YEAR - The calendar year of twelve months to which the annual budget applies.

FUND - An independent fiscal and accounting entity with a self-balancing set of accounts recording cash and/or other resources together with all related liabilities, obligations, reserves and equities which are segregated for the purpose of carrying out specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

FUND ACCOUNT - Any one specific fund comprising a specific sum of money set aside for a particular purpose.

FUND ACCOUNT NUMBER - A numeric code established to identify a fund account.

GRANT - A contribution by one governmental unit to another unit. The contribution is usually made to aid in the support of a specified function (for example, education), but is sometimes also for general purposes.

INTER-FUND TRANSFERS - Amounts transferred from one account to another across funds by amendment of the appropriation resolution.

INTRA-FUND TRANSFERS - Amounts transferred from one account to another within the same fund by amendment of the appropriation resolution.

JOURNAL OF PROCEEDINGS - A journal in which the official records of the proceedings are kept; also referred to as minute book.

LEDGER - A book of final entry in which a record of debits, credits, and all money transactions is kept. Ledger is used to record expenditure transactions.

LEVY - To assess a levy (assess, exact, raise, or collect a tax).

POLITICAL SUBDIVISION - A county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

PUBLIC MONEY - Any money received, collected by or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a

purported representative or agent of the public office.

PUBLIC OFFICE – Any state agency, public institution, political subdivision, other organized body, office, agency, institution or entity established by the laws of this state for the exercise of any function of government.

PUBLIC RECORD – Any record that is kept by any public office, including, but not limited to, state, county, village, township and school district units. See Ohio Revised Code 149.43 for exceptions.

PURCHASE ORDER - A pre-numbered document which authorizes the delivery of specified merchandise or the rendering of certain services, and the making of a charge for them.

RECEIPTS - This term, unless otherwise qualified, means cash received.

REQUISITION - A written order, usually from one department to the purchasing officer or to another department, for specified articles or services.

RESOLUTION - A special or temporary order of legislative body; an order of a legislative body requiring less legal formality than an ordinance or statute.

REVENUE - Public monies from taxes, fines, fees, or levies. These monies are collected by the township, state or county. Some are apportioned or distributed by the state or county.

STATUTE - A particular law enacted and established by the will of the legislative department of government, for instance, state government; also, used to designate written law as compared to unwritten law.

STATUTORY AUTHORITY - That which is required by specific wording of the statute or law; also required by statute or conforming to statute.

SUPER BLANKET CERTIFICATION - The procedure by which a fiscal officer issues a certificate against a specific line item appropriation account for most professional services, fuel, oil, food items, and other specific recurring and reasonably predictable operating expenses, for a period not extending beyond the end of the fiscal year, using a purchase order to post charges against the appropriation fund without the necessity of issuing a certificate each time an item is needed.

SURETY BOND - A written promise to indemnify against loss caused by named parties through non-performance or defalcation.

TAX - To impose a tax; to enact or declare that monies shall be paid by persons liable for the support of government; for instance, a township levy for fire protection.

TAX ANTICIPATION NOTES - Notes issued in anticipation of collection of taxes, usually retireable only from tax collections, and frequently only from the proceeds of the tax levy whose collection they anticipate.

TAX RATE - The amount of tax stated in terms of a unit of the tax base; for example, 25 mills per dollar of assessed valuation of taxable property.

TRANSACTION - Act of conducting any business, management, or affairs of the subdivision.

TREASURY - A place where public revenues are kept recorded in the books of account after depositing them, and the record of where money is disbursed to defray the expense of government.

TRUST FUND - A fund consisting of resources received and held by the governmental unit as trustee to be expended or invested in accordance with the conditions of the trust.

UNENCUMBERED APPROPRIATION - That portion of an appropriation not yet expended or encumbered.

ADDITIONAL RESOURCES

ADDITIONAL RESOURCES

Ohio Association of County Behavioral Health Authorities
33 North High Street, Suite 500
Columbus, Ohio 43215
(614) 224-1111
www.oacbha.org

Ohio Department of Mental Health and Addiction Services
30 East Broad Street, 8th Floor
Columbus, Ohio 43215
(614) 466-2596
mha.ohio.gov

Public Employees Retirement System
277 East Town Street
Columbus, Ohio 43215
(800) 222-27377
www.opers.org

Ohio Ethics Commission
30 West Spring Street
Columbus, Ohio 43215
(614) 466-7090
www.ethics.ohio.gov

Auditor of State
88 E. Broad St., 5th Floor
Columbus, OH 43216
(800) 282-0370 or (614) 466-4514
<https://ohioauditor.gov>

Public Inquiries: 800-282-0370 or 614-466-4514

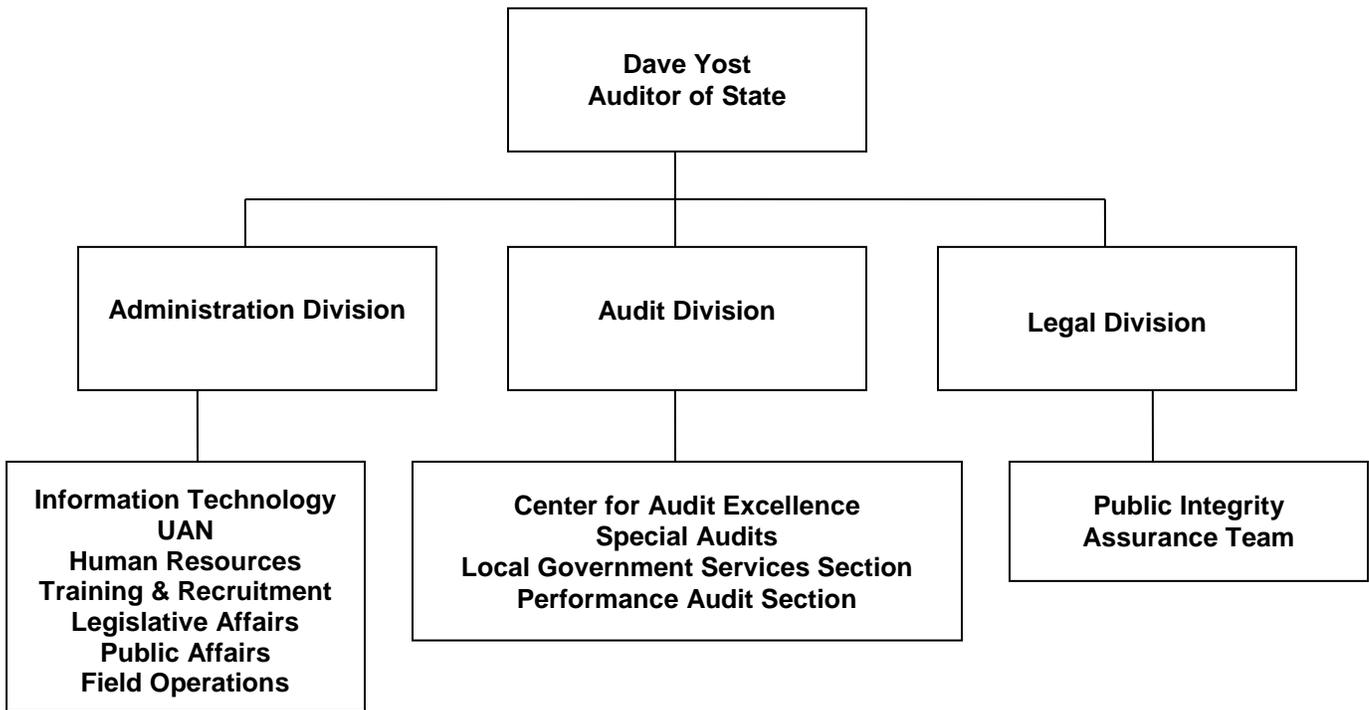
Media Inquiries: 614-644-1111

Legal Counsel: 800-282-0370

Fraud Hotline: 866-FRAUD-OH (866-372-8364)

AUDITOR OF STATE

AUDITOR OF STATE
ORGANIZATIONAL CHART



ADMINISTRATION DIVISION

The **Administration Division** is the managing arm of the Ohio Auditor of State's Office. The Chief of Staff heads the division and reports directly to the Auditor of State. This division is responsible for the day-to-day management and policy decisions of the office.

Information Technology develops and maintains the technology of the Auditor of State's Office. Because many Auditor of State employees regularly work at off-site client locations, they rely on convenient, timely access to the office's computer network.

The **Uniform Accounting Network (UAN)** is housed within the Information Technology Section, which is led by the Chief Information Officer. UAN provides townships, villages, and libraries with a complete computer system (hardware and software), along with training and support. UAN's accounting, payroll, and ancillary (cemetery and inventory tracking) applications help to reduce the time necessary for entities to process accounting transactions and maintain the related accounting records. UAN also fosters timely and useful information for the governing body. Currently, about 75 percent of the state's more than 1,300 townships are using UAN, as are more than 400 villages and libraries.

ADMINISTRATION DIVISION CONTACTS

Toll Free	(800) 282-0370
Fax	(614) 466-4490
Chief of Staff	Brenda Rinehart brinehart@ohioauditor.gov
Deputy Chief of Staff	Tony Tanner ttanner@ohioauditor.gov
Chief Information Officer	David Potts dbpotts@ohioauditor.gov
Chief Financial Officer	William Collier wmcollier@ohioauditor.gov
Director of Personnel	Cindy Sovell-Klein csovell-klein@ohioauditor.gov
Director of Uniform Accounting Network	Tim Moloney tpmoloney@ohioauditor.gov
UAN Support Line	(800) 833-8261
UAN e-mail support	UAN_Support@ohioauditor.gov

AUDIT DIVISION

The Auditor of State is the constitutional officer responsible for auditing all public offices in Ohio, including cities, villages, schools, universities, counties, and townships, as well as state agencies, boards, and commissions.

The office strives, through financial audits of public and quasi-public entities, to ensure that public funds are spent appropriately and lawfully, in accordance with state and local law. The Audit Division is managed by the Chief Deputy Auditor, who reports directly to the Auditor of State. It is made up of several smaller sections, which include the Financial Audit Group, the Medicaid/Contract Audit Section, the Center for Audit Excellence and the Local Government Services Section.

The Auditor of State's Office employs more than 700 auditors located in seven regional offices, including the main office in Columbus: Akron/Canton, Athens, Cincinnati, Columbus, Cleveland, Dayton, and Toledo. Additionally, the State Region, located in Columbus, audits state agencies, boards, and commissions. Each Regional Office is managed by a Chief Auditor who oversees the audits performed by the office within their region.

The **Center for Audit Excellence** is made up of the office's Quality Assurance Section, Accounting and Auditing Support Section, Audit Administration Section, and Training Section. These sections develop auditing standards based on current laws and guidelines and ensure that Auditor of State employees are up-to-date on these standards. This group also ensures that Auditor of State audits are performed in a manner that complies with all auditing standards. Additionally, this section provides financial management training sessions for local officials.

The **Medicaid/Contract Audit Group** focuses its audit work on Medicaid providers; compliance audits of county agencies under interagency agreements with the Ohio Department of Job and Family Services and the Ohio Department of Developmental Disabilities; and program audits aimed at assessing the efficiency and effectiveness of state programs such as child support enforcement, home health care, nursing homes, and food stamps.

The **Financial Audit Group** is responsible for conducting financial audits of all public and quasi-public entities as required under Ohio law. Generally, the Auditor of State's office is required to perform these financial audits at least once every two fiscal years. The office must review the methods, accuracy, and legality of the accounts, financial reports, records, files, and reports of public entities. The Financial Audit Group also determines if the entity has complied with the law, rules, ordinances, and orders pertaining to the office. The Financial Audit Group staff is headquartered out of the seven regional offices, but spends most of its time in the field at local audit sites.

The **Local Government Services Section (LGS)** serves as a consulting and fiscal advisory group to all governmental agencies and subdivisions. The section provides an array of services including, but not limited to, financial forecasts, GAAP conversion assistance, annual financial report processing, record reconstruction and reconciliation, fiscal caution, watch or emergency assistance, and financial management training for elected officials. Publications such as accounting manuals and policy bulletins are distributed to assist local governments in performing their duties and to keep them up to date on their legal requirements.

AUDIT DIVISION CONTACTS

Toll Free **(800) 282-0370**

Fax **(614) 466-4490**

Chief Deputy Auditor Robert Hinkle
rrhinkle@ohioauditor.gov

Assistant Chief Deputy Auditor Leanna Abele
lmabele@ohioauditor.gov

Assistant Chief Deputy Auditor Marnie Carlisle
macarlisle@ohioauditor.gov

Chief Auditor, Center for Audit Excellence W. Brad Blake
wbblake@ohioauditor.gov

Chief Auditor, Medicaid/Contract Audit Section Kristi Erlewine
kserlewine@ohioauditor.gov

Chief Auditor, State Region/ISA Debbie Liddil
dlliddil@ohioauditor.gov

Chief of Local Government Services Unice S. Smith
ussmith@ohioauditor.gov

REGIONAL OFFICES:

Regional Office	Chief Auditor	Counties Served	Phone
Central	Mark Long mllong@ohioauditor.gov	Ashland, Crawford, Delaware, Fairfield, Franklin, Holmes, Knox, Licking, Madison, Marion, Morrow, Pickaway, Richland, Union, Wayne	(800) 443-9275
East	Joey Jones jjones@ohioauditor.gov	Carroll, Columbiana, Jefferson, Mahoning, Portage, Stark, Summit, Trumbull	(800) 443-9271
Northeast	Daniel Stuetzer djstuetzer@ohioauditor.gov	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina	(800) 626-2297
Northwest	Greg Glick gglick@ohioauditor.gov	Defiance, Erie, Fulton, Hancock, Henry, Huron, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Williams, Wood, Wyandot	(800) 443-9276
Southeast	Dave Shoemaker dmschoemaker@ohioauditor.gov	Athens, Belmont, Coshocton, Gallia, Guernsey, Harrison, Hocking, Jackson, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Tuscarawas, Vinton, Washington	(800) 441-1389
Southwest	Loren Crisp lscrisp@ohioauditor.gov	Adams, Brown, Butler, Clermont, Clinton, Fayette, Hamilton, Highland, Lawrence, Pike, Ross, Scioto, Warren	(800) 368-7419
West	Mike Botkin mabotkin@ohioauditor.gov	Allen, Auglaize, Champaign, Clark, Darke, Greene, Hardin, Logan, Mercer, Miami, Montgomery, Preble, Shelby, Van Wert	(800) 443-9274

LOCAL GOVERNMENT SERVICES REGIONAL CONTACTS:

Toll Free (for all regional contacts)1-800-345-2519

LGS Regional Staff	Chief Project Manager	Counties Served
Northeast	Nita Hendryx nrhendryx@ohioauditor.gov	Ashland, Ashtabula, Carroll, Columbiana, Coshocton, Cuyahoga, Erie, Geauga, Harrison, Holmes, Huron, Knox, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, Wayne
Northwest	Belinda Miller blmiller@ohioauditor.gov	Allen, Auglaize, Champaign, Crawford, Defiance, Delaware, Fulton, Hancock, Hardin, Henry, Logan, Lucas, Marion, Mercer, Morrow, Ottawa, Paulding, Putnam, Sandusky, Seneca, Union, Van Wert, Williams, Wood, Wyandot
Southeast	Robert Burlenski raburlenski@ohioauditor.gov	Athens, Belmont, Fairfield, Gallia, Guernsey, Hocking, Jackson, Jefferson, Lawrence, Licking, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Vinton, Washington
Southwest	April Davis acdavis@ohioauditor.gov	Adams, Brown, Butler, Clark, Clermont, Clinton, Darke, Fayette, Franklin, Greene, Hamilton, Highland, Madison, Miami, Montgomery, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Warren
Special Projects	Tracie McCreary tlmccreary@ohioauditor.gov	Administrative projects and support to regions

LEGAL DIVISION

The Auditor of State's **Legal Division** is primarily responsible for providing legal advice to field auditors, assisting in determinations of whether or not the entity being audited is complying with all applicable laws. The legal staff can also help public offices comply with state and federal requirements. Such information can be found in bulletins, informal opinions, and at Auditor of State conferences. The Legal Division also provides continuing education to elected officials and government employees through specific training programs and conferences on government issues.

The **Open Government Unit** serves local officials by providing training and resources to help them better understand their obligations under the Ohio Public Records Act and the Ohio Open Meetings Act. Public officials are required to attend this training during their term in office. The Assistant Legal Counsel and a full-time paralegal serve as the office's experts on public records and open meetings. At the request of local officials, the office offers training seminars and other educational resources on the Sunshine Laws.

LEGAL DIVISION CONTACTS

Toll Free (800) 282-0370

Fax 614) 466-4333

Chief Legal Counsel Mark Altier
mwaltier@ohioauditor.gov

Assistant Legal Counsel (East Region and Open Government Unit)Melissa J. Crocker
mjcrocker@ohioauditor.gov

Assistant Legal Counsel (Southeast, Northwest, and West Regions)Kristen L. Martin
klmartin@ohioauditor.gov

Assistant Legal Counsel (Southwest and State Regions)James S. Harding
jsharding@ohioauditor.gov

Assistant Legal Counsel (Central Region)William J. Owen
wjowen@ohioauditor.gov

Public Integrity Assurance Team

The **Public Integrity Assurance Team** promotes clean, ethical government, exposes corruption and wrongdoing where it exists, and assists law enforcement and prosecutors in the pursuit of justice.

The team brings together the former Special Audit Section, Special Investigations Unit and portions of the Auditor of State's legal staff as one team with one mission. Comprised of forensic auditors, investigators and attorneys, the team has decades of experience and working relationships with law enforcement at the local, state and federal levels. Their expertise allows them to take a case from an initial complaint through conclusion. In cases where local officials have conflicts that make them unable to conduct investigations, the Public Integrity Assurance Team brings independence.

PUBLIC INTEGRITY ASSURANCE TEAM CONTACTS

Toll Free..... **1-866-372-8364**

Email..... fraudohio@ohioauditor.gov

Director..... Brendan M. Inscho
bminscho@ohioauditor.gov

Deputy Director..... Randall E. Turner